

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KLEEN PRODUCTS, LLC, et al.,	}	Docket No. 10 C 5711
Plaintiffs,		
vs.		
PACKAGING CORPORATION OF AMERICA,		
et al.,		
Defendants.	}	Chicago, Illinois May 31, 2012 2:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - RULE 16 CONFERENCE
BEFORE THE HONORABLE MAGISTRATE JUDGE NAN R. NOLAN

APPEARANCES:

For the Plaintiffs:

THE MOGIN LAW FIRM
BY: MR. DANIEL J. MOGIN
707 Broadway, Suite 1000
San Diego, CA 92101
(619) 687-6611

FREED KANNER LONDON & MILLEN LLC
BY: MR. MICHAEL J. FREED
MR. ROBERT J. WOZNIAK
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015
(224) 632-4500

BERGER & MONTAGUE, P.C.
BY: MR. CHARLES PEARSALL GOODWIN
1622 Locust Street
Philadelphia, PA 19103
(215) 875-3000

Court Reporter:

MS. CAROLYN R. COX, CSR, RPR, CRR, FCRR
Official Court Reporter
219 S. Dearborn Street, Suite 1854-B
Chicago, Illinois 60604
(312) 435-5639

1 APPEARANCES CONTINUED:

2

3 For Defendant
4 Georgia-Pacific:

QUINN EMANUEL URQUHART &
SULLIVAN LLP
BY: MR. STEPHEN R. NEUWIRTH
51 Madison Avenue, 22nd Floor
New York, NY 10010
212-849-7000

6

7

GEORGIA-PACIFIC
BY: MS. MARY K. McLEMORE
133 Peachtree Street, N.E.
P.O. Box 105605
Atlanta, GA 30348
(404) 652-4598

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

02:11:22 1 (The following proceedings were had in open court:)

02:11:22 2 THE CLERK: 10 C 5711, Kleen Products v. Packaging
02:11:26 3 Corporation.

02:11:28 4 THE COURT: All right. So this is our third meet and
02:11:34 5 confer in the Kleen case. This case involves -- this meet and
02:11:40 6 confer is with the plaintiffs and with the lawyers for
02:11:46 7 Georgia-Pacific. So let's put your names on the record.

02:11:50 8 MR. NEUWIRTH: Thank you, Judge Nolan. I am Stephen
02:11:52 9 Neuwirth from Quinn Emanuel, outside counsel for
02:11:56 10 Georgia-Pacific.

02:11:56 11 MS. McLEMORE: And I am Mary McLemore, and I am
02:11:58 12 in-house counsel for Georgia-Pacific.

02:12:00 13 THE COURT: Terrific. And, Mr. Mogin, will you
02:12:10 14 introduce your team again?

02:12:12 15 MR. MOGIN: I will, your Honor. Dan Mogin on behalf
02:12:14 16 of plaintiffs; my esteemed co-counsel, Michael Freed; as well
02:12:20 17 as Bob Wozniak, from the Freed Kanner firm; and Mr. Goodwin,
02:12:20 18 who you just met.

02:12:22 19 THE COURT: Good. Thank you.

02:12:26 20 Well, we hope to be as fresh as you are. You just
02:12:28 21 came in here raring to go, and we have done this two times
02:12:32 22 already, but I think you are really lucky because we have
02:12:36 23 gotten some of the kinks out. I mean, I think being the
02:12:42 24 third, being our little caboose here, is going to be very
02:12:46 25 helpful.

02:12:48 1 So I want to -- very much I want to thank you both
02:12:52 2 for coming and to agreeing to this, I am calling it,
02:13:04 3 e-mediation and to actually choose to try to solve discovery
02:13:06 4 disputes in a brand new way.

02:13:08 5 One of the things that I was saying before is that we
02:13:16 6 have tons of rules in the 28 U.S.C. to tell us how do
02:13:26 7 discovery, but there really aren't any rules in how to do
02:13:28 8 e-mediation, so we are kind of making it up as we go along.

02:13:32 9 This morning -- I did this this morning, and I think
02:13:36 10 it set a better tone and was a little bit more helpful, and I
02:13:46 11 don't mean to catch anyone off guard, but I actually turned to
02:13:50 12 the defendants' lawyer and said, Can you tell us three things
02:13:52 13 you would like to accomplish today, because I think that will
02:13:56 14 make sure -- one of the things, Ms. McLemore --

02:14:04 15 MS. McLEMORE: McLemore.

02:14:06 16 THE COURT: -- Ms. McLemore, is it's very important
02:14:08 17 to me that I give individual attention to each of the
02:14:10 18 defendants. One of the problems, as you can imagine, for a
02:14:14 19 judge when you have multiparty cases is not to clump everybody
02:14:22 20 "the defendants," "the plaintiffs." And I -- not only is it a
02:14:28 21 just thing to do, but these sessions have helped me to learn
02:14:32 22 more about each person's -- not only the way you run your
02:14:36 23 company, but kind of what your particular take is to all of
02:14:40 24 this, which is, again, the reason I thank you for coming here.

02:14:46 25 MS. McLEMORE: Glad to be here, Judge.

02:14:46 1 THE COURT: So in your wish list, what are the three
02:14:52 2 things you would like -- hope to accomplish? We have bullet
02:14:56 3 points to do, but specifically for Georgia-Pacific.

02:15:02 4 MR. NEUWIRTH: So let me see if I can frame it as
02:15:06 5 three points.

02:15:06 6 THE COURT: Okay.

02:15:08 7 MR. NEUWIRTH: I think what I could probably fairly
02:15:12 8 describe as the first point would be something that we have
02:15:18 9 really picked up from your Honor. I think that we are
02:15:24 10 genuinely hopeful that we can come up with a way that we can
02:15:30 11 reasonably be satisfied that we've got an effective and well
02:15:40 12 verified process, and we are genuinely pleased to have the
02:15:46 13 opportunity to work with your Honor today to try to get to
02:15:48 14 that goal.

02:15:50 15 THE COURT: Good.

02:15:50 16 MR. NEUWIRTH: I think reasonable is a standard that
02:15:54 17 we can all live with. We may have different views on what's
02:15:58 18 reasonable, but we are hoping that with your Honor, we can
02:16:02 19 reach some or at least make progress toward that end and set
02:16:06 20 up a framework for getting to that end.

02:16:10 21 I think a second very high priority for
02:16:16 22 Georgia-Pacific is to get to a point where we are able to deal
02:16:30 23 with what I might call the facts of the discovery process. I
02:16:36 24 think from our perspective, one of the challenges that we have
02:16:40 25 had in this process that I know your Honor has been struggling

02:16:42 1 to have us all cope with is that there has been a certain
02:16:50 2 extent to which there's been a lot of speculation about what's
02:16:54 3 going on with the discovery. As you know from the hearing,
02:17:00 4 Georgia-Pacific was I think probably at the forefront of
02:17:06 5 developing and implementing the method that the defendants
02:17:10 6 have used to date, and as of today, with some very limited
02:17:14 7 exception, certain small categories of documents like travel
02:17:18 8 records that we disclosed to the plaintiffs are forthcoming,
02:17:26 9 Georgia-Pacific has completed its production. And so there is
02:17:30 10 a full set of the documents from this process with the
02:17:36 11 custodians we use that we think would provide at least a
02:17:42 12 factual predicate for deciding what to do next, and we
02:17:46 13 certainly understand and appreciate a point that your Honor
02:17:50 14 has made about how there has to be an opportunity to review
02:17:56 15 what's there.

02:17:56 16 THE COURT: Right.

02:17:56 17 MR. NEUWIRTH: And, you know, I think that we accept
02:18:00 18 that premise.

02:18:04 19 And I think on the other hand, it's problematic if
02:18:10 20 assertions are made about what we have done that really are
02:18:14 21 counter to what has actually happened and that we know has
02:18:18 22 happened.

02:18:18 23 So the bottom line is for point two, we'd like to get
02:18:24 24 to a point where we can have discussions that are based on our
02:18:28 25 shared understanding of facts about the process so that we can

02:18:32 1 constructively work together to come up with this, and we
02:18:34 2 think that your, you know, phased discovery concept can work
02:18:40 3 as long as part two of the phase discovery has, you know, the
02:18:50 4 normal constraints that should be on that process where it's
02:18:52 5 not just we go to a new round of starting from scratch, but
02:18:56 6 there has to be a predicate for asking for more.

02:19:02 7 And then, I guess, the third category, which somewhat
02:19:06 8 relates to the second, if I had to come up with three which
02:19:10 9 you have asked for, would be -- I want to frame this in a fair
02:19:22 10 way. I think that from our perspective, we have been dealing
02:19:26 11 with something of a moving target, but we think it's in part
02:19:30 12 because of what I described as the second issue.

02:19:32 13 THE COURT: Right.

02:19:32 14 MR. NEUWIRTH: That, you know, to the extent people
02:19:38 15 have not yet gone through the materials we produced, it's
02:19:46 16 almost inevitable that if the standard is let's just talk
02:19:52 17 about things to do in discovery and it's not rooted in what's
02:19:56 18 already happened, I think it's inevitable to some extent that
02:19:58 19 we would have a moving target.

02:20:00 20 So I think we're not at all suggesting -- look, as
02:20:04 21 Mr. Freed and others on the plaintiffs' side know, I do a lot
02:20:06 22 of work on the plaintiffs' side, and so I am not
02:20:10 23 anti-plaintiff by any means.

02:20:12 24 THE COURT: Right.

02:20:14 25 MR. NEUWIRTH: But all I'm saying is I think we'd

02:20:16 1 like there to be a -- we'd like to be able -- without
02:20:24 2 foreclosing people's rights to reasonably ask for things
02:20:26 3 later, we'd like to have a process where every time we answer
02:20:30 4 something, the request doesn't change to something new; you
02:20:36 5 know, well, since you proved that, now prove this.

02:20:38 6 THE COURT: Right.

02:20:38 7 MR. NEUWIRTH: We'd like there to be some, you know,
02:20:42 8 just -- again, without foreclosing people's rights down the
02:20:46 9 road, which we believe in and are not trying to prevent, we
02:20:48 10 just think a moving target makes discovery very, very
02:20:52 11 challenging and problematic.

02:20:52 12 THE COURT: And it makes it very hard to go back to
02:20:54 13 your client because you tell your client here's what's going
02:20:58 14 on and then every iteration.

02:21:02 15 Well, you are certainly much more philosophical. I
02:21:08 16 had something as mundane as litigation hold. I mean, I kind
02:21:12 17 of like your -- it's funny. Somebody asks somebody a
02:21:16 18 question, and they don't -- it's an open-ended question, and
02:21:20 19 those are really good ways to praise where we are right now.

02:21:26 20 I literally meant, What's your position on 30(b)(6),
02:21:30 21 litigation hold. So I don't know, did you have a preview that
02:21:32 22 you were going to be asked what are the three goals you wanted
02:21:36 23 to get out of today?

02:21:38 24 MR. GOODWIN: No one gave me that preview, your
02:21:40 25 Honor.

02:21:40 1 THE COURT: Your team didn't tell you? Okay. They
02:21:44 2 should have.

02:21:44 3 MR. FREED: We should have.

02:21:46 4 THE COURT: Right. Kind of like -- because we are
02:21:48 5 just talking about Georgia -- this is our real opportunity to
02:21:52 6 talk about Georgia-Pacific, and are there three things that
02:21:56 7 you walked in today that you would like to talk about, either
02:22:00 8 in general or specific?

02:22:02 9 MR. GOODWIN: I am going to be somewhere between the
02:22:04 10 very pragmatic approach and the very philosophical approach.

02:22:08 11 THE COURT: Good. Okay.

02:22:10 12 MR. GOODWIN: I think the first thing here is I would
02:22:12 13 like to see our discussions move past the sufficiency of the
02:22:16 14 ESI search issues that we have discussed a lot. I think as I
02:22:20 15 have reviewed Georgia-Pacific's written responses to our
02:22:24 16 document requests and some of the correspondence, going
02:22:26 17 through that, there seemed to be some real areas where
02:22:34 18 Georgia-Pacific is not responding with information or not
02:22:38 19 providing responsive information, and I think a lot of those
02:22:42 20 areas are very important and very basic.

02:22:44 21 And so while we can always try and verify what they
02:22:46 22 did to search for what they agreed to produce, I think
02:22:50 23 plaintiffs have a large problem --

02:22:52 24 THE COURT: Okay.

02:22:54 25 MR. GOODWIN: -- with what they have agreed to or

02:22:56 1 what they're not agreeing to produce.

02:22:58 2 THE COURT: But on the RPDs.

02:23:00 3 MR. GOODWIN: Well, it spills over into the 30(b)(6)
02:23:04 4 process, it has something to do with the interrogatory
02:23:08 5 process, the sort of overall discovery areas.

02:23:20 6 Secondly, what I'd like to emphasize, the information
02:23:20 7 that plaintiffs are seeking in large part does go to the
02:23:24 8 sufficiency of discovery. We have asked for a lot of
02:23:28 9 personnel and organizational-type information that we haven't
02:23:30 10 received, and without that information, plaintiffs are simply
02:23:36 11 in a position that we can't judge the sufficiency of the
02:23:38 12 search that Georgia-Pacific has undertaken other than to do it
02:23:44 13 on the basis of taking their word for it and that's just not
02:23:48 14 how our litigation -- our adversarial system works. We are
02:23:56 15 supposed to verify that. A client would never let a lawyer
02:23:58 16 off for, I just took that guy's word for it.

02:24:00 17 THE COURT: Right.

02:24:02 18 MR. GOODWIN: And relatedly, there are a number of
02:24:04 19 requests we just seemed to be being stonewalled on. The
02:24:10 20 production, our discovery of information is really basic,
02:24:14 21 fundamental information that would be ordinarily
02:24:18 22 discoverable --

02:24:18 23 THE COURT: Can you give me an example?

02:24:20 24 MR. GOODWIN: The identities of people at GP who had
02:24:24 25 something to do with trade associations.

02:24:26 1 THE COURT: Okay.

02:24:26 2 MR. GOODWIN: I mean, in this case especially, given
02:24:30 3 the sort of allegations of coordinated price increases,
02:24:34 4 matching up with trade associations, that's of particular
02:24:38 5 importance; but in any antitrust case, that is routine, basic
02:24:44 6 discovery, and I'm a little shocked that I have to be here
02:24:48 7 talking to the court about this, to be honest, your Honor.

02:24:50 8 THE COURT: Okay. So I think if I'm hearing you
02:24:56 9 correctly, Mr. Neuwirth said his first point or his second
02:25:04 10 point was he wants to get comfortable with facts so that the
02:25:10 11 discovery -- since we all know the discovery process is based
02:25:14 12 upon facts. So you're kind of saying the same thing, is that
02:25:18 13 you need some basic facts.

02:25:22 14 MR. GOODWIN: We are just --

02:25:22 15 THE COURT: You need some basic facts that would help
02:25:28 16 you to be able to move to the next stage too.

02:25:30 17 MR. GOODWIN: Right. I don't know how much this has
02:25:34 18 been in front of the court, but we have had the custodian
02:25:36 19 issue.

02:25:38 20 THE COURT: And that's been a common issue. And
02:25:40 21 there are some common issues, and I wanted to share with you
02:25:46 22 and the other plaintiffs' lawyers who have been here for the
02:25:50 23 other two. So this is good because I actually think you're
02:25:56 24 both kind of looking for kind of a similar.

02:26:00 25 I wanted to say, and I particularly want to say to

02:26:04 1 you also, I think it's a little easier for the judge to bare
02:26:08 2 her soul than it is for the other side to bare their soul. I
02:26:14 3 think what these lawyers have done is take such a risk because
02:26:22 4 I have been asking them to do something that is kind of
02:26:24 5 counter to or it first appeared to be counter to the adversary
02:26:30 6 system, and I am asking them at least when they are coming
02:26:34 7 together here, we're going to not react as defensively as
02:26:44 8 we -- and I am going to call myself a trial lawyer too -- kind
02:26:46 9 of our normal reaction is to react.

02:26:52 10 But there is a couple principles here that are kind
02:26:54 11 of underneath or this tension here that exists here because
02:27:00 12 this is a very asymmetrical case where the defendants, as I
02:27:06 13 said this morning, are giving, giving, giving and the
02:27:10 14 plaintiffs are taking, taking, taking and you are not getting
02:27:12 15 anything in return, and that can prove to be kind of
02:27:16 16 frustrating.

02:27:16 17 And the plaintiffs, because of the crazy system that
02:27:18 18 we have, did these 94 request to produce documents, I figured
02:27:28 19 it's about 60 days after the case started that Judge Shadur --
02:27:30 20 well, no, that Judge Shadur finally ruled on the motion to
02:27:34 21 dismiss.

02:27:36 22 MR. NEUWIRTH: Yes.

02:27:36 23 THE COURT: I mean, it was astounding, because of our
02:27:40 24 vertical system, this is the way you're supposed to do it,
02:27:42 25 nobody knew anything back then.

02:27:46 1 So instead of casting aspersions or blame, I think
02:27:52 2 you all did the very best you could do, and now we have a
02:27:58 3 little hindsight here. I don't want to throw you off, but we
02:28:04 4 had kind of a disaster yesterday when we tried to talk in much
02:28:08 5 detail about the RFPs because I think that the better way to
02:28:14 6 handle this is for our next status is to give people -- we may
02:28:24 7 able to talk around it a little bit. But this is so fraught
02:28:28 8 with problems because in the traditional case that I have
02:28:32 9 seen, you get something like you guys got. What almost
02:28:38 10 everybody does in my cases is run to the judge and say, You
02:28:42 11 enter a protective order because this is ridiculous. These
02:28:46 12 guys are out to lunch.

02:28:48 13 You tried to do the right thing back, okay, and they
02:28:52 14 did not run in and say, Hey, order them to compel. So here we
02:28:58 15 are a year later with kind of a procedural nightmare is what I
02:29:02 16 am calling it. So I don't want to -- other than to hear maybe
02:29:08 17 some specifics that go to you, I don't want to spend a lot of
02:29:12 18 time today because I need the next two weeks to try to see if
02:29:16 19 I can come up with any thoughts on how we can deal with this
02:29:22 20 in general. But I want you to know in front of your client
02:29:26 21 that I think you did a fabulous job, and how could anybody in
02:29:30 22 this kind of a case do differently, I do mean it. It's like
02:29:38 23 60 days after the case started.

02:29:42 24 And I was telling them this morning about the
02:29:44 25 Southern District of New York new complex case management. I

02:29:50 1 don't think they've got it down perfectly, but they recognize
02:29:54 2 that the regular rules don't apply.

02:29:56 3 MR. NEUWIRTH: Right, at least they are trying.

02:30:00 4 THE COURT: They are trying, because this is pretty
02:30:02 5 hard -- it's hard for you to know what should be written, and
02:30:04 6 it's hard for them to know how they would respond because
02:30:08 7 nobody knows.

02:30:10 8 Second thread that went through, which seemed to make
02:30:16 9 life a lot easier that is fact-gathering, is these folks
02:30:20 10 really need organizational charts or, if you don't have
02:30:24 11 organizational charts, whatever the comparable is. They need
02:30:30 12 to know the key players, not just the key executives, and we
02:30:36 13 can get down to this, they need to know who they are, what
02:30:40 14 their job is, and I said to Jim this morning, I think he is
02:30:46 15 afraid to give it because then you think they're going to turn
02:30:50 16 them into custodians. It's like turning them into a monster
02:30:56 17 or something. And I said we have to take one step at a time.
02:31:00 18 They can't tell you -- since they don't have an insider here,
02:31:06 19 they can't tell you what is key to them without having some
02:31:12 20 basic structure information.

02:31:16 21 So what you have reviewed so far, what do you know --
02:31:18 22 you tell me if you -- pretend you were talking to a jury right
02:31:22 23 now. What do you know about GP's structure system?

02:31:28 24 MR. GOODWIN: Well, it would be a mighty short
02:31:32 25 speech. I mean, we know --

02:31:32 1 THE COURT: You know names?

02:31:34 2 MR. GOODWIN: No, we really -- we have some -- and I
02:31:38 3 believe Mr. Neuwirth actually reproduced that interrogatory
02:31:42 4 response in his binder --

02:31:52 5 THE COURT: I didn't even know there were
02:31:54 6 interrogatories.

02:31:54 7 MR. MOGIN: Let me back up and explain that to you.

02:31:54 8 THE COURT: Yeah. Where did they come from? I
02:31:54 9 didn't know there were any interrogatories. Okay?

02:31:58 10 MR. MOGIN: It's interesting and it's illustrative as
02:32:00 11 well.

02:32:00 12 In their answer --

02:32:02 13 THE COURT: In their?

02:32:04 14 MR. MOGIN: Answer to the complaint.

02:32:04 15 THE COURT: Okay.

02:32:04 16 MR. MOGIN: After the motions to dismiss.

02:32:06 17 THE COURT: Okay.

02:32:08 18 MR. MOGIN: GP dropped a footnote raising for the
02:32:12 19 first time the possibility that we had sued the wrong
02:32:18 20 Georgia-Pacific entity or entities.

02:32:18 21 THE COURT: Oh.

02:32:20 22 MR. MOGIN: As a result, a process between GP and the
02:32:24 23 plaintiffs ensued where we tried to get that basic
02:32:28 24 information. And as I said, it's illustrative what happened,
02:32:38 25 and I think Mr. Goodwin has a demonstrative. He can walk you

02:32:42 1 through sort of a who shot Jonathan. And this, I think, will
02:32:44 2 tell you -- this will give you an excellent idea of where we
02:32:50 3 are with GP.

02:32:50 4 THE COURT: Okay. Good.

02:32:52 5 MR. MOGIN: And the so-called facts of discovery that
02:32:56 6 Mr. Neuwirth alluded to.

02:33:04 7 MR. GOODWIN: And I don't know if it is -- the time
02:33:12 8 line probably contains far more detail than we need to discuss
02:33:16 9 and the main point of the time line. I guess if we start the
02:33:20 10 process in August, this was effectively a seven-month process
02:33:24 11 for this issue of whether we sued the right entity or not got
02:33:28 12 resolved. It resulted in October in plaintiffs' promulgating
02:33:32 13 a first set of interrogatories and supplemental document
02:33:38 14 requests onto Georgia-Pacific, and the supplemental
02:33:40 15 interrogatories which are reproduced, I believe that's tab D-1
02:33:46 16 in the binder that Steve put together, contains a series of
02:33:56 17 questions about corporate form and corporate structure and
02:34:02 18 what becomes relevant for present purposes.

02:34:06 19 After seven months of discussion among the parties, I
02:34:10 20 think that issue -- the corporate structure issue, we feel we
02:34:14 21 have sued the right entity and we have enough discovery to
02:34:16 22 defend that position.

02:34:16 23 THE COURT: Okay.

02:34:18 24 MR. GOODWIN: But for present purposes and where we
02:34:20 25 are now, there's the response to interrogatory 5. And the

02:34:26 1 response to interrogatory 5, interrogatory 5 asks some
02:34:34 2 identifying information about I believe 18 or 19 -- I guess it
02:34:38 3 was actually 20. One person I think we got their name wrong
02:34:42 4 and one person GP forgot to answer about them, for some
02:34:50 5 reason, and there was later subsequently a supplemental
02:34:54 6 interrogatory answer providing information for that person.
02:34:54 7 The plaintiffs asked about 20 people, of whom I believe 12 or
02:34:58 8 so were identified in the initial disclosures that GP provided
02:35:04 9 to plaintiffs.

02:35:06 10 So we have the response to interrogatory 5, and so
02:35:08 11 it's a limited response because the purpose of the
02:35:10 12 interrogatory is just to find out who these relevant personnel
02:35:16 13 worked for, who pays them, and what their job duties are so
02:35:20 14 that we can locate -- and that was a focused interrogatory to
02:35:24 15 hopefully end that corporate structure dispute.

02:35:30 16 And aside from what is in the corpus of the
02:35:34 17 documents, which is still something of an unknown country
02:35:38 18 because of the filing of production, this is all the
02:35:42 19 information we have about GP personnel in total, these -- I
02:35:46 20 think it goes from page 18 to page 23, these five pages, which
02:35:54 21 is basically that we know someone's job title and who they
02:35:58 22 were employed by, and then we have a very capsule description
02:36:04 23 of their responsibilities.

02:36:06 24 What we don't have is an indication of who reports to
02:36:10 25 whom or some kind of -- you know, something like this only

02:36:14 1 much thicker that as we're reviewing all the documents GP has
02:36:18 2 produced, we can know who the to and froms -- it's nice to
02:36:24 3 know Mike Adams is one person or is a sender or a recipient,
02:36:30 4 but we don't know who the Bob Smith who was the other part of
02:36:34 5 that email correspondence is. I think there is an email, and
02:36:38 6 we only have --

02:36:38 7 THE COURT: Okay. That's why we're meeting, because
02:36:42 8 what we found out from Temple-Inland yesterday is the way they
02:36:50 9 organized themselves. We found out from I.T. today, Jim
02:36:54 10 brought charts this thick across the country all the
02:36:58 11 divisions, and they're figuring that out.

02:37:00 12 So am I cutting you off, Charles, if I say, So how do
02:37:06 13 you guys organize yourself?

02:37:08 14 MR. MOGIN: I think there is a little bit more to the
02:37:10 15 story.

02:37:10 16 MR. GOODWIN: There is a little bit more to the
02:37:12 17 story, and what I -- there is somewhere buried in or among all
02:37:18 18 these papers, we have a structure or some information about
02:37:22 19 which corporation owns what corporation and some idea of the
02:37:26 20 structure there, and it's quite complicated, and I am sure tax
02:37:32 21 reasons are involved to be that complicated in structure.

02:37:36 22 THE COURT: Sure.

02:37:36 23 MR. GOODWIN: But I would, for instance -- and I only
02:37:40 24 -- I apologize because I only have one copy of this email that
02:37:46 25 is from Georgia-Pacific's production, and we used this in the

02:37:50 1 meet and confer, I think, with Mr. Neuwirth. And about the
02:37:58 2 time before last, the date is now escaping me, but this was
02:38:04 3 produced. Steve has seen this, so it shouldn't be too much of
02:38:08 4 a surprise. And we have this huge list of people this
02:38:14 5 appointment was circulated to. Two of them are custodians.
02:38:16 6 We don't know who the rest are.

02:38:18 7 THE COURT: So you need this information.

02:38:18 8 MR. GOODWIN: We don't even know if they worked for
02:38:20 9 GP.

02:38:20 10 THE COURT: Okay. Okay.

02:38:22 11 MR. GOODWIN: I mean, and that's -- I had that --

02:38:26 12 THE COURT: This is a good example.

02:38:26 13 MR. GOODWIN: Right.

02:38:26 14 THE COURT: So when we're saying that things may be
02:38:30 15 sequential, one of them is you need to -- I mean, the more --
02:38:38 16 you're lucky that they turned over so much already --

02:38:42 17 MR. GOODWIN: Yes.

02:38:42 18 THE COURT: -- because most of the other people
02:38:44 19 haven't done your kind of production, so then you can come
02:38:46 20 back with some specific things.

02:38:50 21 MR. GOODWIN: Right.

02:38:50 22 MR. MOGIN: Your Honor, that's not just a list of
02:38:52 23 people. If you look at the bottom of it where the actual
02:38:54 24 message is, let's think about what this is about. Smurfit --
02:39:00 25 and look at the time period. Smurfit has announced a price

02:39:04 1 increase of \$50 a ton. Let's all of these people get together
02:39:12 2 and discuss Smurfit's pricing reaction -- or Smurfit's pricing
02:39:16 3 action. Obviously, it's highly relevant to the case,
02:39:20 4 certainly likely to lead to admissible evidence.

02:39:26 5 THE COURT: They sure did a good job on giving it to
02:39:32 6 you.

02:39:32 7 MR. GOODWIN: Yes, it was produced.

02:39:32 8 THE COURT: It was produced. Okay? It was produced.
02:39:36 9 You know, it looks to me like it could be very informative.

02:39:42 10 So what you are missing, because this is what we are
02:39:46 11 doing here today, breaking it down, is you don't know who any
02:39:50 12 of these people are.

02:39:50 13 MR. GOODWIN: Well, there are two custodians, and I
02:39:54 14 am not going to -- who I believe are mentioned here, but I
02:39:56 15 want to be fair. But the other 23 are people we don't.

02:40:00 16 THE COURT: Okay. That's a good fact; to go back to
02:40:04 17 our first thing on discovering facts, this is obviously a
02:40:08 18 perfect example.

02:40:10 19 So do you have -- I mean, I don't know if you --

02:40:14 20 MR. NEUWIRTH: It may be useful for me to address
02:40:16 21 this --

02:40:16 22 THE COURT: Yes, it would.

02:40:18 23 MR. NEUWIRTH: -- and maybe suggest how we move
02:40:20 24 forward.

02:40:24 25 I think that you correctly point out, your Honor,

02:40:26 1 that we did produce this document.

02:40:28 2 THE COURT: Yes, right.

02:40:30 3 MR. NEUWIRTH: And we would argue that the fact that
02:40:34 4 this document was produced and that there are at least two of
02:40:38 5 our custodians on the document is a reflection of the fact
02:40:44 6 that we have selected a good set of custodians.

02:40:48 7 Now, we understand that nothing in e-discovery is
02:40:52 8 perfect, and we have said repeatedly to the plaintiffs that we
02:40:58 9 don't have a problem with the idea that once you have reviewed
02:41:00 10 the documents we've produced, let's talk about what else needs
02:41:06 11 to be done. But I think that this is one document out of the
02:41:12 12 more than million pages of documents we produced that's not
02:41:16 13 a -- we have heard a lot about the plaintiffs delving into the
02:41:18 14 PCA documents. For whatever reason, they are not looking at
02:41:22 15 the full set of GP documents yet, it appears. Maybe they are,
02:41:26 16 I don't know, but I haven't heard that they are.

02:41:28 17 But we would respectfully suggest that this is a very
02:41:32 18 good example of what we see as actually the problem that we
02:41:36 19 are hoping we can resolve with your Honor today because we did
02:41:40 20 produce the document. We haven't been told that the
02:41:46 21 plaintiffs ran these names against the rest of the documents
02:41:50 22 that we produced. We haven't been told that they did any of
02:41:56 23 the things that would be at their disposal to do to find other
02:41:58 24 documents about this meeting in what we have produced. They
02:42:04 25 provided you with a set of interrogatories where we answered

02:42:08 1 all the questions. They asked for the corporate structure of
02:42:12 2 Georgia-Pacific of certain entities. It's all described here,
02:42:16 3 and no one ever came back to us and said that these
02:42:20 4 interrogatory answers were faulty or incomplete.

02:42:24 5 We answered the questions that we were asked about
02:42:26 6 the structure, we provided the job descriptions for every one
02:42:30 7 they asked about, and I would just, you know, very
02:42:34 8 respectfully say that I think that -- I think that the problem
02:42:40 9 that we are facing here is that we are sort of shooting in the
02:42:50 10 dark rather than looking at the production to assess what our
02:42:52 11 options are. And maybe I can give just one or two examples
02:42:56 12 that I think will help to put this in perspective.

02:43:04 13 THE COURT: Sure. Sure.

02:43:04 14 MR. NEUWIRTH: So one of the things that the
02:43:06 15 plaintiff said about our production, which I think has to be
02:43:12 16 the time when they haven't reviewed this, but they told your
02:43:16 17 Honor when they submitted their status report, and this is a
02:43:18 18 quote, that based on the way we answered the RFPs or the
02:43:24 19 RPDs --

02:43:24 20 THE COURT: Whatever they are.

02:43:26 21 MR. NEUWIRTH: -- the quote was, GP refuses to
02:43:28 22 provide discovery as to its and its personnel's participation
02:43:32 23 in trade association matters. Now, that's a quote. And
02:43:36 24 that's something Mr. Goodwin mentioned this morning.

02:43:40 25 Now, search string number two is the following. FBA,

02:43:48 1 or Fibre Box Association, or AF and PA, or AFPA, or American
02:43:56 2 Forest and Paper Association, or ICCA, or International
02:44:00 3 Corrugated -- the list goes on and on. This is a search term
02:44:04 4 just to find --

02:44:06 5 THE COURT: Trade associations.

02:44:08 6 MR. NEUWIRTH: -- the names of trade associations.
02:44:10 7 It's not connected to anything else. It doesn't say it has to
02:44:14 8 be trade association plus. It's a search just to find any
02:44:18 9 document that has the trade association names. And
02:44:22 10 notwithstanding this assertion that was made, we know for a
02:44:26 11 fact that GP has produced over 10,000 documents, excluding
02:44:36 12 attachments, that were hit by this search string that are
02:44:42 13 trade association documents.

02:44:44 14 In fact, just so that there isn't any doubt about
02:44:48 15 this, we thought it would be helpful --

02:44:52 16 THE COURT: You brought this all the way from New
02:44:54 17 York?

02:44:56 18 MR. NEUWIRTH: Well, here is the reason.

02:44:58 19 MR. GOODWIN: Hopefully Federal Express did.

02:45:00 20 MR. NEUWIRTH: The reason that we brought it is
02:45:02 21 because, as it happened today, we have found ourselves -- the
02:45:12 22 court is being told we didn't produce things, and this is a
02:45:28 23 pile of documents that have already been produced, a sample of
02:45:34 24 trade association documents that we produced, American Forest
02:45:38 25 and Paper Association -- you can look at them. These are all

02:45:42 1 documents. They are agendas for meetings, who attended,
02:45:48 2 senior people at GP talking about trade associations.

02:45:52 3 And all that we're saying to your Honor is instead of
02:45:56 4 coming in and telling us, GP hasn't done this, GP hasn't done
02:46:02 5 that, GP hasn't given us documents, the one example they have
02:46:08 6 come up with is where we did give them the document using our
02:46:10 7 methodology, and this is just one example.

02:46:14 8 Another thing that they told us was --

02:46:18 9 MR. GOODWIN: Can I respond to this point before we
02:46:22 10 get lost here?

02:46:22 11 THE COURT: Just wait one minute. You are going to
02:46:24 12 have all the time you need to talk.

02:46:26 13 MR. NEUWIRTH: Another thing we were told was GP
02:46:28 14 attempts to limit document discovery as to pricing, and GP
02:46:34 15 attempts to limit document discovery as to competitive
02:46:36 16 conditions.

02:46:42 17 Search string number seven is price with other
02:46:44 18 connectors. Search string number eight is pricing with
02:46:46 19 increase, decrease, raise, low, high, decline. Of course this
02:46:52 20 document got picked up. Demand, we have all the names of the
02:46:56 21 other defendants. And just, again, so your Honor understands
02:47:00 22 what we're talking about, we understand the plaintiffs haven't
02:47:04 23 undertaken to look at this yet, but these, I believe -- these
02:47:14 24 are documents that we produced on pricing -- sample documents
02:47:16 25 on pricing and competitive conditions. And just to give an

02:47:22 1 example, board of managers meeting, third-quarter review
02:47:30 2 packaging segment, they've got these for every single quarter,
02:47:34 3 all sorts of information about pricing, what's happening to
02:47:38 4 prices, what decisions should be made.

02:47:42 5 THE COURT: And they could find this --

02:47:44 6 MR. NEUWIRTH: They could find it by just using the
02:47:48 7 search string.

02:47:48 8 THE COURT: All right. Everybody is doing it
02:47:50 9 differently.

02:47:50 10 MR. NEUWIRTH: Here is documents -- these are
02:47:52 11 quarterly board meeting reviews. They have every single one
02:47:56 12 that exists has been produced. This is on both boxes and
02:48:00 13 containerboard; and just to give you a sample of this
02:48:06 14 document, plans, key initiatives and progress per segment,
02:48:12 15 market update and point of view, talking about pricing, it's
02:48:16 16 all here, price per ton, what's expected to happen.

02:48:24 17 Another category that we produced is -- these are
02:48:28 18 called point of view reports. They are done regularly. Do
02:48:34 19 you know what these reports are? These are reports on what's
02:48:38 20 happening in the market and when there are --

02:48:40 21 THE COURT: In the cardboard box or cardboard
02:48:44 22 container --

02:48:44 23 MR. NEUWIRTH: In containerboard and box.

02:48:46 24 THE COURT: Okay. Mark it.

02:48:48 25 MR. NEUWIRTH: This one is called containerboard

02:48:52 1 sales point of view.

02:48:54 2 THE COURT: Okay.

02:48:54 3 MR. NEUWIRTH: This is OCC, one of the input's point
02:48:58 4 of view. Every time there was a major decision about
02:49:06 5 anything, a point of view document was either created or --

02:49:10 6 THE COURT: Is that like a to/from?

02:49:12 7 MR. NEUWIRTH: It's something that's used by the
02:49:14 8 senior business people to explain decisions that are made and
02:49:18 9 to explain perspectives on what's happening in the market.

02:49:24 10 Another thing we have already produced are documents
02:49:26 11 called containerboard vision reports. This is containerboard
02:49:32 12 and boxing. They're done I think almost monthly.

02:49:38 13 What topics do the plaintiffs say they care about?
02:49:42 14 Capacity, business integration, point of view scenarios, by
02:49:50 15 region, by section of the packaging capabilities, details on
02:49:54 16 all the operations, returns by segment, this is all here in
02:50:02 17 the production that they have already received. And if one
02:50:06 18 simply -- the way we pulled these is we took the four search
02:50:10 19 strings that expressly dealt with pricing and easily pulled up
02:50:16 20 all of these documents.

02:50:16 21 This folder is another kind of document. What is
02:50:24 22 this? A monthly business review. What are the topics that
02:50:28 23 they'd like to hear about? 2006 objectives, plan target,
02:50:38 24 trade association monthly data, customer service and
02:50:42 25 production items, 2007 SOP master.

02:50:48 1 We provided the plaintiffs a whole set of reports for
02:50:54 2 every output decision the company made. There was something
02:50:56 3 called the SOP process that is fully documented for the entire
02:51:02 4 period. Those have all been produced to the plaintiffs, and
02:51:06 5 they haven't looked at them yet.

02:51:08 6 THE COURT: Now, just to be fair here for a minute --

02:51:10 7 MR. NEUWIRTH: Yes.

02:51:10 8 THE COURT: -- do they know -- I don't have any idea
02:51:16 9 what your SOP process is or who's in charge of your SOP
02:51:20 10 process --

02:51:22 11 MR. NEUWIRTH: But it's all in the documents.

02:51:22 12 THE COURT: -- or what group it would -- okay.

02:51:26 13 MR. NEUWIRTH: So here's the problem --

02:51:28 14 THE COURT: Part of why it's good that an outsider is
02:51:30 15 the mediator is what I don't know, you know, and there is no
02:51:38 16 way I would know these kind of details --

02:51:42 17 MR. NEUWIRTH: Right.

02:51:42 18 THE COURT: -- might happen to coincide with basic
02:51:44 19 information that they may not know.

02:51:48 20 MR. NEUWIRTH: But in fairness, your Honor, in this
02:51:52 21 litigation, the plaintiffs have accused the defendants --

02:51:54 22 THE COURT: I know. And you feel very accused.

02:51:56 23 MR. NEUWIRTH: No, no. We understand this is a
02:51:58 24 litigation. We understand that the response that we have to
02:52:02 25 provide is to give the plaintiffs documents, and I don't think

02:52:08 1 we disagree at all with your premise that it can be a good
02:52:16 2 thing in the process to do reasonable things to help out.

02:52:20 3 What we are saying with this is not that there isn't
02:52:24 4 information we can work with you today that would be helpful.
02:52:28 5 That's not our point at all. Our point is that the nature of
02:52:32 6 the accusations that are being made about what we have done or
02:52:36 7 not done is not rooted in the facts of what have happened so
02:52:40 8 far.

02:52:40 9 And so when I talked about my second goal, my second
02:52:44 10 goal was simply to say, Let's try to get to a point where we
02:52:48 11 all are dealing with the same thing -- if the plaintiffs came
02:52:54 12 to us and said, We have seen all these documents about the SOP
02:52:56 13 process --

02:52:58 14 THE COURT: What is it.

02:53:00 15 MR. NEUWIRTH: -- can we talk about it, or, Here is
02:53:02 16 an interrogatory, tell us everyone who was involved in it. I
02:53:04 17 think the documents, I would suggest, make very clear who was
02:53:08 18 involved and who the people are that are in charge and the
02:53:10 19 people in charge of it are all custodians, so you have all
02:53:14 20 their documents.

02:53:16 21 But when we're at the level of being told, We ignored
02:53:20 22 pricing, or, We didn't do things about -- or, We didn't tell
02:53:22 23 them how the company is structured, even though they show you
02:53:26 24 an interrogatory with all the answers, then I think it becomes
02:53:28 25 very hard for us to make the type of progress we should be

02:53:32 1 making.

02:53:32 2 And so all that we're suggesting is that we believe
02:53:38 3 that as we hope we demonstrate at the hearing, in a world
02:53:42 4 where we know we couldn't be perfect, because ESI could never
02:53:46 5 be perfect, we really tried very hard to do the right thing.
02:53:52 6 And without foreclosing the plaintiffs' right to reasonably
02:53:56 7 ask for more, all that we're asking is, please, we're almost
02:54:00 8 begging the plaintiffs to look at what we produced, and then
02:54:06 9 let's talk because we think you will find we really have given
02:54:10 10 you a lot of very helpful material that we believe will prove
02:54:12 11 that the allegations are false, the plaintiffs will do what
02:54:16 12 they want to do to prove that they are true, but we really
02:54:20 13 have not withheld the things that we are being accused of
02:54:22 14 withholding, and we genuinely made an effort through our
02:54:26 15 custodians to find the people who would really have been
02:54:28 16 involved in any of the type of conduct that the plaintiffs had
02:54:32 17 suggested, and we hope that by looking through the documents,
02:54:36 18 you know, a document like the one they showed, can be a good
02:54:42 19 road map to other things to look for.

02:54:44 20 But they haven't looked in what we produced. I am
02:54:50 21 confident there are other documents about this meeting or
02:54:52 22 other documents about these people or other information. And,
02:54:56 23 again, I want to be clear, this is not to say we don't want to
02:54:58 24 cooperate.

02:54:58 25 THE COURT: Okay. You can see, I hope, Charles, the

02:55:06 1 power of words. I mean, if you were a judge and you got
02:55:12 2 pleadings from both sides and see the way people talk about
02:55:16 3 each other, part of my early push on cooperation and trying to
02:55:22 4 really change a different way, it can set the whole tone of
02:55:28 5 the case just because of choice of words, and some people have
02:55:44 6 -- when Chris and I -- on Monday, I spent, you know, as I have
02:55:48 7 already bored you with, two full days on the RPDs. I was
02:55:54 8 trying to, the little bit I know, tried to figure out if I
02:56:00 9 were prosecuting the case, I thought the trade associations
02:56:04 10 would be high, high up there. I mean, there is a lot of
02:56:08 11 dribble in there. But I thought, God, I was married to a
02:56:12 12 lobbyist, divorced from a lobbyist, I get it, and then my
02:56:18 13 criminal defense background here --

02:56:22 14 MR. MOGIN: Do the two coincide, your Honor?

02:56:24 15 THE COURT: So, anyway, when I looked at trade
02:56:26 16 associations and I think, you know, I read -- you said they
02:56:32 17 didn't give you anything. I thought -- now, I just want to
02:56:34 18 tell you, my stranger reaction was, whoa, it would seem like
02:56:42 19 this is a pretty -- this is a pretty fertile area, would be
02:56:48 20 trade associations in a price fixing case or allegedly price
02:56:56 21 fixing case.

02:56:56 22 So I took what you said -- because I am in the same
02:57:00 23 boat. I am trying to absorb thousands of pages into a little,
02:57:04 24 tiny bit here. That stuck with me, and that image stuck with
02:57:10 25 me, and little did I know that -- now, maybe these papers say

02:57:14 1 nothing, I don't know, but they have certainly produced a lot
02:57:20 2 of material here. So whatever you're going to say back,
02:57:24 3 please watch -- just kind of the words you use in answering
02:57:30 4 back because I do think they actually affect people.

02:57:34 5 MR. GOODWIN: I understand, your Honor. We take GP's
02:57:42 6 words very seriously, and I know your Honor does not want to
02:57:44 7 go into --

02:57:46 8 THE COURT: Inflammatory.

02:57:46 9 MR. GOODWIN: Well, we don't want to do a deep dive
02:57:50 10 into the document request.

02:57:50 11 THE COURT: See, what do you need to -- see --

02:57:52 12 MR. GOODWIN: This is actually --

02:57:54 13 THE COURT: -- we can cut through the whole thing.
02:57:56 14 What do you need to understand their documents? That's what
02:57:58 15 I'm trying to get you.

02:58:00 16 MR. GOODWIN: Well, that's part --

02:58:02 17 MR. MOGIN: Your Honor, not to interrupt, but we need
02:58:04 18 to respond to what Mr. Neuwirth said because he has painted a
02:58:08 19 very interesting picture.

02:58:10 20 MR. GOODWIN: It seems, at least in my estimation,
02:58:12 21 and I don't want to cast aspersions, but there is something of
02:58:14 22 a gap between the representations that Mr. Neuwirth is making
02:58:24 23 here to your Honor and the quality of their written responses
02:58:30 24 to the document requests.

02:58:30 25 Now, maybe this is a matter that they have actually

02:58:32 1 exceeded what they promised they would do in the document
02:58:36 2 requests and they need to go back and amend their document
02:58:38 3 request answers and say, Well, yes, we did give you all this
02:58:42 4 stuff we said we weren't giving you at least by negative
02:58:46 5 implication.

02:58:46 6 And I know this document -- this is actually not
02:58:50 7 intended to be comprehensive of all the disputes we have with
02:59:00 8 sort of the very careful language that gets used in GP's
02:59:02 9 document request responses.

02:59:04 10 If the trade associations matter is the easiest to
02:59:10 11 comprehend, if we just go to -- it's request No. 7, which is
02:59:18 12 sort of our big opening request to GP of, you know, give us
02:59:24 13 all your trade association documents, and GP, you know,
02:59:28 14 narrows that and whittles it --

02:59:32 15 MR. NEUWIRTH: We didn't narrow -- if you look at
02:59:34 16 what we said --

02:59:34 17 MR. MOGIN: I don't think we interrupted
02:59:36 18 Mr. Neuwirth's presentation, your Honor, tempted as we were.

02:59:40 19 THE COURT: Okay.

02:59:40 20 MR. GOODWIN: There's a series of requests about
02:59:42 21 trade associations and industry meetings where it's not
02:59:46 22 satisfied just by running, you know, a search string with a
02:59:52 23 name of a trade association. What if, you know, Fibre Box
02:59:56 24 Association, I guess, they're in suburban Chicago here, what
03:00:00 25 if there was reference to the Chicago meeting? It requires

03:00:04 1 going and interviewing your personnel and saying, Well, was
03:00:08 2 there any other way you described those meetings, who did you
03:00:10 3 go with.

03:00:12 4 These aren't e-discovery disputes. These are just
03:00:16 5 ordinary discovery disputes that happened in the paper age,
03:00:18 6 and they don't transmogrify just because we're in e-discovery.
03:00:22 7 It's basic searching, asking your client so you can find
03:00:26 8 responsive information.

03:00:28 9 And, sure, the trade association name shows up over
03:00:32 10 and over again. What about the personnel at the trade
03:00:34 11 association? If you dealt with Mr. Johnson from FBA, is there
03:00:40 12 a search for Mr. Johnson's name? I mean, that's the kind of
03:00:46 13 thing that comes from the simple task, the good-lawyering
03:00:50 14 task, of interviewing your client.

03:00:50 15 MR. FREED: But there is another thought which I
03:00:52 16 think is so much simpler. It would help us to review that
03:00:58 17 boxload of documents that Mr. Neuwirth brought if they would
03:01:02 18 tell us who these people are.

03:01:04 19 THE COURT: That's what I'm trying -- Charles hasn't
03:01:04 20 been here the last day and a half. What got clear yesterday,
03:01:18 21 and which I -- you know, I think you guys answered this in
03:01:20 22 kind of a fit because of the overbreadth of the band thing.
03:01:24 23 So you decided -- I mean, this is the way hindsight is looking
03:01:28 24 at it. By limiting it by this limitation of executives with
03:01:34 25 the -- you know, you were trying to do what you were hoping

03:01:36 1 the judge was going to do, by limiting it to every one of them
03:01:42 2 were -- how did they say it? -- executives --

03:01:44 3 MR. GOODWIN: Actually, the terminology shifts. In
03:01:48 4 the document request response, they are described as primary
03:01:54 5 decisionmakers, but in some of the correspondence, though,
03:01:56 6 they are described as key decisionmakers with day-to-day
03:01:58 7 authority over pricing.

03:02:00 8 THE COURT: Okay. But we are going back to a year
03:02:02 9 ago before any e-discovery was decided upon. They are
03:02:08 10 inundated with 92 things that could take somebody a year to be
03:02:14 11 able to figure out. Okay? The number one thing that we got
03:02:18 12 out of the last two is with all the paper and all the
03:02:24 13 gibberish and all the everything else, they don't understand
03:02:28 14 who, the names, literally, the names of not just the 50
03:02:36 15 custodians or however many custodians you have, but who the
03:02:40 16 structure is so, as Charles just said, he sees an email, he
03:02:44 17 doesn't know who Nan Nolan is -- Nan Nolan, the CEO, is
03:02:50 18 sending an email to Chris Campbell, and they don't understand
03:02:54 19 who Chris Campbell is.

03:02:56 20 We are talking basic 101 information that they need.

03:03:02 21 MR. FREED: If I could amplify, if I may.

03:03:06 22 THE COURT: Yes, please do.

03:03:08 23 MR. FREED: If the answer to that is, Well, load up
03:03:10 24 our million documents -- I am speaking rhetorically -- search
03:03:14 25 this, you will come up with the names extracted from 2200

03:03:20 1 documents as opposed to, We're going to tell you --

03:03:22 2 THE COURT: Right.

03:03:22 3 MR. FREED: -- so that when you start -- and there is
03:03:24 4 one other person who is very discrete, and to me, this has
03:03:28 5 been the most mystifying thing, is they have a CEO by the name
03:03:32 6 of Hannan and they won't designate him as a custodian. And he
03:03:36 7 is very involved in trade associations, and he is constantly
03:03:40 8 talking about the containerboard market.

03:03:42 9 MR. MOGIN: He is even mentioned in the complaint by
03:03:44 10 name --

03:03:44 11 THE COURT: So he is one -- this is a specific --

03:03:48 12 MR. FREED: I know.

03:03:48 13 THE COURT: When we're talking about specific things
03:03:52 14 that should be discussed in a mediation standpoint, either
03:03:58 15 with or without the judge, that's a good example.

03:04:02 16 But is there a way, this is what we did with Temple
03:04:06 17 and with IP this morning. Is there a way to get them some
03:04:12 18 kind of basic -- if it's not called an organizational chart, a
03:04:20 19 function chart with names and who the people are and also
03:04:26 20 where they work.

03:04:26 21 We approached it two ways this morning: one is
03:04:28 22 organizational chart, the other is the names of the people who
03:04:36 23 got the litigation hold.

03:04:38 24 Now, another way to go at this same fact-gathering in
03:04:44 25 order to be able to get them, and I am telling you, and you

03:04:50 1 are going to just have to trust me, it doesn't mean it's
03:04:54 2 automatically going to more custodians. It's not. They can't
03:04:58 3 read these documents without a road map. This is like the
03:05:02 4 road map to the documents.

03:05:06 5 MR. NEUWIRTH: So I don't think we have a problem
03:05:10 6 with you, and I don't think -- hopefully, we won't have a
03:05:12 7 problem -- I don't think we have a problem with what you just
03:05:16 8 said, and let me explain the background.

03:05:20 9 THE COURT: Good. Good.

03:05:22 10 MR. NEUWIRTH: With respect to organizational charts,
03:05:26 11 we have told the plaintiffs, and Mary will confirm this, as
03:05:30 12 you may know, Georgia-Pacific is a privately-held company.

03:05:34 13 THE COURT: Okay.

03:05:36 14 MR. NEUWIRTH: Since 2005, it has not been a public
03:05:38 15 company. And there are not in existence organizational
03:05:44 16 charts. They don't exist.

03:05:46 17 THE COURT: Okay.

03:05:46 18 MR. NEUWIRTH: Now, there is no doubt that -- and I
03:05:56 19 did have a preview about this -- there is no doubt that there
03:06:02 20 are documents that we produced where the word count includes
03:06:04 21 reference to organizational or reference to charts or maybe
03:06:08 22 even both, but that doesn't mean that that was talking about
03:06:16 23 Georgia-Pacific organizational charts.

03:06:18 24 And, you know, Mr. Mogin can laugh, but Ms. McLemore
03:06:22 25 is here, and she can speak on behalf of the company.

03:06:24 1 THE COURT: I am not laughing.

03:06:26 2 MR. NEUWIRTH: So that's number one.

03:06:26 3 Number two is that the plaintiffs to this point have
03:06:30 4 made one request to us, which you heard reiterated today,
03:06:34 5 which is that we give the name of every person in the company
03:06:40 6 whoever did anything related to a trade association, and there
03:06:44 7 is no -- what we have said over and over again is that that
03:06:48 8 request is so overbroad that the way it's defined, we don't
03:06:52 9 even know how we could leave anybody out.

03:06:56 10 So all that we have been trying to do is come up with
03:07:00 11 some reasonable parameters on providing a list of names. Now,
03:07:06 12 what we did here, in fairness, I really don't think this was
03:07:10 13 so much about a fit of peak as it was taking something that
03:07:16 14 was tremendously overbroad, particularly in the context of
03:07:20 15 these 92 or four requests and coming up with something that we
03:07:26 16 thought would be a reasonable alternative.

03:07:34 17 So I don't think we have a problem with giving more
03:07:38 18 information about trade associations as long as we can put
03:07:40 19 some parameters on it so it's an implementable task, because
03:07:44 20 if the question is, Tell us everyone who ever had an
03:07:46 21 involvement in a trade association, Mary would literally have
03:07:50 22 to ask every single person in the company from 2003 to the
03:07:54 23 present if they had ever done anything, defined as anything,
03:08:02 24 related to a trade association.

03:08:04 25 And also on the issue of the people who got the

03:08:12 1 litigation hold, as we have explained to the plaintiffs -- and
03:08:16 2 I didn't mean to be too opaque; if I was, I apologize -- the
03:08:22 3 constraint that we have been facing -- and I think I expressly
03:08:24 4 mentioned this, Chuck, in our last call -- is this privilege
03:08:26 5 issue, and I told you that if we can find a way to work around
03:08:32 6 the privilege issue, we are part of a group of defendants, and
03:08:36 7 we don't want to trigger a waiver, and I know there's some
03:08:38 8 strongly-held views that --

03:08:40 9 THE COURT: Right.

03:08:40 10 MR. NEUWIRTH: But if we could get an understanding.

03:08:42 11 THE COURT: It's not the document itself.

03:08:44 12 MR. NEUWIRTH: No.

03:08:44 13 But if we could get an understanding that the
03:08:48 14 production of the names --

03:08:50 15 THE COURT: Are not waiving anything.

03:08:52 16 MR. NEUWIRTH: -- would not constitute a waiver, and
03:08:54 17 particularly if we could get something from the court which
03:08:58 18 says that the fact that these are being provided does not mean
03:09:02 19 that someone becomes a custodian and the normal standards
03:09:08 20 would apply, we would give the list today.

03:09:10 21 MR. FREED: Did you mean work product? You're saying
03:09:14 22 privilege.

03:09:14 23 MR. NEUWIRTH: Well, privilege meaning work product
03:09:16 24 -- and it is an attorney-client communication.

03:09:18 25 MR. FREED: Not what I'm saying. But the reason I

03:09:18 1 mentioned that is at an earlier meeting, one of the positions
03:09:22 2 taken was the selection of who we sent litigation hold notices
03:09:26 3 to is a work product issue.

03:09:28 4 MR. NEUWIRTH: I think it's a work product issue and
03:09:30 5 potentially an attorney-client issue.

03:09:34 6 MR. FREED: I think we got past it when we
03:09:38 7 understood, and I think with your suggestion, we can get past
03:09:40 8 it. So I'm trying figure out, is there some other privilege
03:09:42 9 notion here which I am not aware of?

03:09:44 10 MR. NEUWIRTH: The privilege --

03:09:46 11 MR. FREED: I can't imagine it's privileged who
03:09:48 12 belongs to a trade association.

03:09:50 13 MR. NEUWIRTH: We are talking about litigation hold.
03:09:52 14 The litigation hold is all we're talking about here.

03:09:54 15 MR. FREED: That's not a privilege either.

03:09:56 16 MR. NEUWIRTH: Look, all that I have said in very
03:10:02 17 good faith to Dan and Chuck the last time we spoke, I think I
03:10:06 18 said this expressly, is we are part of a joint defense group,
03:10:08 19 there is a privilege issue that has been raised --

03:10:12 20 THE COURT: Right.

03:10:12 21 MR. NEUWIRTH: -- we want to avoid a waiver of that
03:10:14 22 privilege to the extent we are not ordered to waive it --

03:10:16 23 THE COURT: Correct.

03:10:16 24 MR. NEUWIRTH: -- and all that we're asking for is an
03:10:20 25 agreement that the production of the list of people who got

03:10:24 1 the hold won't be treated as a waiver or won't be treated, as
03:10:32 2 your Honor said --

03:10:34 3 THE COURT: It may be --

03:10:36 4 MR. NEUWIRTH: -- as a basis.

03:10:36 5 THE COURT: It may be a basis for more custodians.

03:10:38 6 MR. NEUWIRTH: Of course.

03:10:38 7 THE COURT: That might happen, of course.

03:10:40 8 MR. NEUWIRTH: But the nominal burdens for doing that
03:10:44 9 -- normal burdens would apply.

03:10:44 10 MR. MOGIN: What would those normal burdens be?

03:10:48 11 MR. NEUWIRTH: That there is a reasonable basis to
03:10:48 12 add the custodian.

03:10:50 13 MR. MOGIN: GP, excuse me, your Honor, they talk the
03:10:56 14 talk and they won't walk the walk and Mr. --

03:10:58 15 THE COURT: You're being very difficult.

03:11:00 16 MR. MOGIN: I am.

03:11:00 17 THE COURT: You are. Mr. Freed, make Mogin be quiet.

03:11:06 18 MR. MOGIN: Your Honor, the situation with the CEO,
03:11:10 19 Mr. Hannan, is very illustrative.

03:11:12 20 THE COURT: We are going to get that next. I'm doing
03:11:16 21 litigation holds. You just got all the damn names. Now wait
03:11:18 22 a minute.

03:11:20 23 MR. NEUWIRTH: I will do more.

03:11:22 24 THE COURT: Wait. We finish that up. We are going
03:11:24 25 to get to Mr. Hannan. Hold on.

03:11:24 1 MR. NEUWIRTH: I am ready to do more, your Honor.

03:11:26 2 THE COURT: Thank you. Okay.

03:11:28 3 MR. NEUWIRTH: We are also willing to give the titles
03:11:30 4 of all the people who got the litigation hold, not just the
03:11:34 5 name, if they have titles.

03:11:34 6 THE COURT: I have a couple other follow-up questions
03:11:38 7 on the charts.

03:11:40 8 MR. FREED: I understand. I have asked Mr. Mogin to
03:11:42 9 wait, your Honor.

03:11:42 10 THE COURT: Thank you, Mr. Freed. That's great.

03:11:46 11 See, that's the kind of -- that's the kind of give
03:11:46 12 and take we -- I mean, I really understood it from the way
03:11:54 13 they talked about it yesterday. This is -- this is a problem
03:11:58 14 for the court, not knowing who these people are. I am a much
03:12:02 15 better judge when I know the facts, and, you know, not that I
03:12:08 16 have to know every one of the custodians, but -- so this is
03:12:12 17 great.

03:12:12 18 Okay. So you are -- if we are able to, there are,
03:12:16 19 Mr. Wozniak, two new cases, I mean at least two cases, on
03:12:24 20 giving the names of litigation holds in which judges have
03:12:30 21 e-discovery, the one from California and someplace else,
03:12:34 22 finding that it's not privileged or work product. This is not
03:12:38 23 to the hold itself. We are not asking that.

03:12:42 24 I think you make a very good point, no one else made
03:12:44 25 it, about waiver. You happen to be in a really much better

03:12:48 1 circuit here than the Second Circuit. We have a true
03:12:54 2 privilege. We respect the privilege here. We don't think
03:12:58 3 it's hiding the truth. And waiver, giving one document, 10
03:13:06 4 documents isn't going to waive the whole thing, but I think
03:13:08 5 it's better to incorporate it in the order.

03:13:10 6 MR. NEUWIRTH: Thank you, your Honor.

03:13:12 7 MR. FREED: There is a third addition which I don't
03:13:14 8 want to speak for Jim McKeown, but I think he agreed to this,
03:13:20 9 and that is the date of the litigation hold.

03:13:20 10 MR. NEUWIRTH: We have no problem telling you the
03:13:22 11 date --

03:13:24 12 MS. McLEMORE: Whoa, whoa, whoa, whoa, whoa.

03:13:24 13 MR. NEUWIRTH: I'm sorry.

03:13:26 14 MR. FREED: Let me just say why.

03:13:28 15 THE COURT: Tell why.

03:13:30 16 MR. FREED: Because it will give us an indication of
03:13:32 17 where there may have been spoliation or destruction between
03:13:36 18 the time of the complaint being filed and the time the person
03:13:40 19 was notified.

03:13:42 20 MS. McLEMORE: Can I explain how we did this and what
03:13:44 21 the practical problem with that is?

03:13:46 22 MR. FREED: Sure.

03:13:48 23 MS. McLEMORE: It was an iterative process. We have
03:13:50 24 about 400 people on the litigation hold.

03:13:54 25 THE COURT: Good.

03:13:54 1 MS. McLEMORE: Just so that we are talking numbers.

03:13:56 2 Okay? Just slightly south of 400.

03:14:00 3 What we did is we immediately put a core group of
03:14:06 4 people on the hold. The hold -- the first hold went out on a
03:14:10 5 Friday, and I know that because I stayed late to get the
03:14:14 6 litigation hold out. Then we went through the normal process
03:14:22 7 of talking to people, who else should be added. I mean, we
03:14:26 8 literally, the day we learned of the complaint, got the
03:14:28 9 litigation hold out to the core people.

03:14:30 10 THE COURT: Okay.

03:14:32 11 MS. McLEMORE: And so there have -- I'm going to have
03:14:36 12 22 dates -- don't hold me to that; that's not accurate -- but,
03:14:42 13 I mean, different people got the hold on different days. And
03:14:44 14 then at some point, there was an amendment, and everybody who
03:14:50 15 was on the hold up to that point got the litigation hold yet
03:14:54 16 again because it had been amended.

03:14:56 17 And so to say this person got the hold on this date
03:15:00 18 is something that I am not really capable of doing in the way
03:15:06 19 that I think the plaintiffs want.

03:15:08 20 THE COURT: All right. Could you do a range between
03:15:12 21 the first time they did it and their last date with the
03:15:18 22 amendment and then if you have a specific person or persons
03:15:22 23 who you think might have a spoliation, they can go back and
03:15:26 24 get the date then?

03:15:28 25 MR. FREED: And spoliation has a really negative

03:15:32 1 connotation. I don't mean to suggest if there is a time
03:15:34 2 period when somebody didn't get a hold, we are not going to
03:15:36 3 say that means there was spoliation, but it helps us
03:15:40 4 understand, again, what we are getting.

03:15:42 5 So if it is, These are the people in the first group
03:15:42 6 and the people in the second group were within this range or
03:15:46 7 the person in the first group may have gotten a further
03:15:50 8 notice --

03:15:50 9 THE COURT: Is it within like a three-week period or
03:15:54 10 four-week --

03:15:54 11 MS. McLEMORE: No. Like I said, this was a very
03:15:58 12 iterative process. We found old holds unrelated to this case
03:16:04 13 where some of the custodians, some of the people that we
03:16:08 14 believed probably should be added to the -- because we think
03:16:12 15 our obligation to preserve is much broader than our obligation
03:16:16 16 to produce.

03:16:16 17 THE COURT: It is.

03:16:18 18 MS. McLEMORE: So we went very broad. We found old
03:16:20 19 litigation holds that some of our custodians were a part of,
03:16:24 20 and so we grabbed those old litigation holds --

03:16:26 21 THE COURT: Got it.

03:16:28 22 MS. McLEMORE: -- and added it to this hold. I mean,
03:16:30 23 I have so many different --

03:16:32 24 MR. FREED: Just tell us what you can tell us, I
03:16:34 25 guess.

03:16:34 1 THE COURT: Well, how about this, though. If that's
03:16:36 2 a specific and they can go back and resurrect the date if
03:16:40 3 you've got it, won't that be enough for you?

03:16:42 4 MR. FREED: If we have an issue, then we would like
03:16:46 5 to talk to them.

03:16:46 6 THE COURT: Right.

03:16:46 7 MR. NEUWIRTH: But I would just make one request to
03:16:50 8 your Honor which alludes to something that you had said
03:16:52 9 earlier about giving and taking in this process.

03:16:56 10 THE COURT: Yes.

03:16:56 11 MR. NEUWIRTH: It's -- I would think especially based
03:17:00 12 on Mr. Freed's reference to spoliation, it would only be
03:17:02 13 appropriate that the plaintiffs tell us all the people who got
03:17:08 14 their litigation holds and the dates on which the plaintiffs
03:17:12 15 gave their litigation holds.

03:17:14 16 MR. WOZNIAK: I don't think that's a problem at all.

03:17:16 17 THE COURT: That's not a problem at all.

03:17:20 18 MR. FREED: It's a great deal easier for us.

03:17:24 19 MR. NEUWIRTH: We have some questions about what's
03:17:24 20 been done on the plaintiffs' side. And I am not assuming
03:17:28 21 spoliation at all. I am just saying if we are going to go
03:17:30 22 down the path of treating this information as relevant, we
03:17:32 23 should have the goose/gander approach.

03:17:36 24 MR. FREED: Okay.

03:17:36 25 MR. GOODWIN: If I can back up to some of

03:17:38 1 Mr. Neuwirth's earlier comments on the -- I believe in
03:17:44 2 addition to GP saying that it does not have organization
03:17:48 3 charts, I believe we have also heard -- and I am certain Steve
03:17:52 4 will correct me if I'm wrong -- that there are no job
03:17:56 5 descriptions for its personnel? Did I misapprehend something?

03:18:00 6 MR. NEUWIRTH: We gave you job descriptions.

03:18:02 7 MS. McLEMORE: There are no written job descriptions
03:18:04 8 in our system.

03:18:06 9 MR. GOODWIN: And this -- what puzzles me here, even
03:18:10 10 though GP is a private company, and I appreciate that, and so
03:18:14 11 you don't have all the reporting and, you know, shareholder
03:18:18 12 relations kinds of things that a public company would have, GP
03:18:22 13 is still subject to discrimination laws, and the federal
03:18:24 14 employment laws and the state employment laws were applicable,
03:18:28 15 and, you know, if you have to fire somebody for falling short
03:18:32 16 of their job description who is in a protected category, if
03:18:36 17 there is no preexisting job description, how do you defend
03:18:38 18 your case? I mean, it seems like you have to have these
03:18:42 19 documents to manage a corporation.

03:18:44 20 MR. NEUWIRTH: Do you have an authority for that?

03:18:46 21 MR. GOODWIN: Well, we fired them. Why? They
03:18:50 22 weren't doing their job. Well, is there a description of
03:18:52 23 their job? No, there's no preexisting description --

03:18:54 24 MR. NEUWIRTH: I'm just asking the question. Do you
03:18:54 25 have an authority for your proposition --

03:18:56 1 MR. GOODWIN: No, I don't. I'm just --

03:18:56 2 MR. NEUWIRTH: Let me just --

03:18:56 3 MR. GOODWIN: Steve, I am going to answer your
03:18:58 4 question. I don't. It just seems puzzling to me. It's how
03:19:02 5 do I run a company -- how does someone run a company if you
03:19:04 6 don't know what someone who you're paying does for a living?

03:19:16 7 (Judge Nolan exited.)

03:19:18 8 MR. FREED: So you gave us titles?

03:19:22 9 MS. McLEMORE: Correct.

03:19:26 10 MR. GOODWIN: And -- well, I don't want to speak
03:19:28 11 without the magistrate.

03:19:30 12 MR. FREED: No, I was just asking you.

03:20:12 13 (Judge Nolan entered.)

03:20:12 14 THE COURT: Let me be very pedantic. If I go and
03:20:16 15 call up Georgia-Pacific right now and you're lucky enough to
03:20:22 16 have an operator who answers the phone and I say, I want to
03:20:26 17 talk to somebody in marketing, don't you have a call sheet
03:20:32 18 that says who is in marketing?

03:20:36 19 Or if I said, I want to talk to the head of
03:20:38 20 marketing, now, whether you call it a chart, okay, there must
03:20:46 21 be some way to have like an organizational way to know how to
03:20:56 22 get Nan to the marketing department.

03:21:04 23 This is a secret organization here.

03:21:06 24 MR. NEUWIRTH: One thing I was going to say, as
03:21:12 25 Ms. McLemore has explained, we have about 400 people on the

03:21:16 1 list of people who got the litigation hold, and we have
03:21:20 2 offered today to provide all of their titles.

03:21:24 3 THE COURT: Okay.

03:21:24 4 MR. NEUWIRTH: So that is not --

03:21:26 5 THE COURT: We should first take a look at that.

03:21:28 6 MR. NEUWIRTH: Well, I am saying I think it's a step
03:21:30 7 towards what you want.

03:21:32 8 THE COURT: Right.

03:21:32 9 MR. NEUWIRTH: It does not organize people by who
03:21:34 10 does what relative to whom, but it certainly will get insight
03:21:38 11 into what they do. So if someone is, you know, analyst
03:21:44 12 marketing department, that will show up if there is such a
03:21:46 13 thing as an analyst and such a thing as a marketing
03:21:50 14 department.

03:21:50 15 MR. MOGIN: Could I just have that back again? It
03:21:54 16 doesn't show who relates to whom?

03:21:56 17 MR. NEUWIRTH: Well, giving titles is not -- giving a
03:22:00 18 list of titles next to a list of names is different -- if I
03:22:04 19 may show this?

03:22:04 20 THE COURT: Please do.

03:22:04 21 MR. NEUWIRTH: -- (continuing) is different from a
03:22:06 22 chart like this which organizes people with lines. That's all
03:22:10 23 I'm saying.

03:22:10 24 MR. MOGIN: I agree.

03:22:10 25 MR. NEUWIRTH: It's a list.

03:22:12 1 MR. MOGIN: It certainly is different.

03:22:12 2 MR. NEUWIRTH: Yes.

03:22:12 3 THE COURT: But you're going to have the name, and
03:22:14 4 you're going to have the title, and then you can make your
03:22:18 5 own, basically.

03:22:20 6 MR. GOODWIN: Well, I don't think the titles really
03:22:22 7 tell us, your Honor, who works for who.

03:22:26 8 MR. NEUWIRTH: The titles --

03:22:26 9 THE COURT: And then what they did, and then what
03:22:30 10 they did, because you are going to kind of make your own,
03:22:32 11 which is what people do in discovery anyway, and then they
03:22:34 12 went through and they were able to check who the custodians
03:22:38 13 were, then they were able to circle and say, Well, this looks
03:22:42 14 like somebody who might be important here when they start
03:22:46 15 seeing the emails.

03:22:48 16 Okay. So were you going to say you were going to do
03:22:52 17 something besides the litigation holds and I so abruptly cut
03:22:56 18 you off?

03:22:58 19 MR. NEUWIRTH: No, all I said was the extra thing I
03:23:00 20 was going to do -- and you did not cut me off -- is I said we
03:23:02 21 would also give the titles, not just the list of names.

03:23:06 22 THE COURT: Okay.

03:23:06 23 MR. GOODWIN: Does someone else have an org chart or
03:23:08 24 job description for GP's personnel, say an auditor or parent
03:23:12 25 company?

03:23:12 1 THE COURT: Charles, could we do this, though? This
03:23:16 2 is the first of many meetings. I think on this one, you ought
03:23:20 3 to get these 400 names as quickly as possible with these
03:23:24 4 titles, and then you are a very organized person here, and see
03:23:30 5 what you can do with the computer with these people and see if
03:23:32 6 we start to get it on this particular issue.

03:23:38 7 You hear us. I am telling you that yesterday was
03:23:42 8 startling to me on how basic information I think they need in
03:23:54 9 order to, you know, be able to amass this wealth of
03:24:02 10 information here.

03:24:02 11 MR. NEUWIRTH: I would just reiterate again, your
03:24:04 12 Honor, we don't have -- we are not disputing that principle at
03:24:06 13 all.

03:24:08 14 THE COURT: Right.

03:24:08 15 MR. NEUWIRTH: We just want it to be done relative to
03:24:10 16 what's actually happened so far so that the tools that are
03:24:14 17 also available at their disposal can be used as well.

03:24:16 18 MR. FREED: It will help us.

03:24:18 19 THE COURT: It will.

03:24:18 20 MR. GOODWIN: It will be a step in the right
03:24:20 21 direction.

03:24:20 22 MR. NEUWIRTH: We will give it to you. We are
03:24:22 23 agreeing. We haven't said we won't help.

03:24:24 24 MR. FREED: Good.

03:24:24 25 MR. GOODWIN: There was one other thing --

03:24:26 1 MR. NEUWIRTH: We said, Please don't ignore what we
03:24:28 2 have given you as well because that can help you too.

03:24:30 3 MR. GOODWIN: To come back to one of the points
03:24:32 4 Mr. Neuwirth raised earlier on, what he said, and I'm going to
03:24:36 5 probably get this wrong, but basically that everyone in the
03:24:38 6 company had some involvement with trade associations, so,
03:24:42 7 therefore, plaintiffs' request for that information was
03:24:48 8 extraordinarily burdensome.

03:24:50 9 And this is one where we have really been scratching
03:24:52 10 our heads because you mentioned the phone operator. I doubt
03:24:56 11 she had any -- I shouldn't be so sexist, he or she --

03:25:00 12 THE COURT: Right.

03:25:02 13 MR. GOODWIN: -- didn't have any involvement with a
03:25:04 14 trade association in any meaningful way, and I think the same
03:25:08 15 thing would be true for a receptionist at the front desk, a
03:25:12 16 janitor, or mailroom staff. I think we can sit here and
03:25:16 17 easily imagine the people who work for GP who have no
03:25:18 18 meaningful involvement with trade associations, so we are
03:25:20 19 scratching our heads as to how this claim that everyone in
03:25:24 20 the --

03:25:26 21 THE COURT: Do you think it's fair to say, though,
03:25:28 22 when you go to their string cites of trade associations, which
03:25:36 23 you haven't had sufficient time to do, which nobody has had
03:25:40 24 enough time to do, and you start putting all those documents
03:25:44 25 into the platform, you work with your string cites on the

03:25:48 1 trade association, do you think if I invite you back again
03:25:54 2 with Mr. Neuwirth when you've got some specific -- more
03:25:58 3 specific -- or you don't even have to come back, you can pick
03:26:04 4 up the phone or send an email and say, I'm really struggling
03:26:08 5 with this, I don't know -- I can't figure out who the heck
03:26:12 6 these people are, are they in-house, are they lobbyists, are
03:26:16 7 they with the trade association, will you help him out if he
03:26:22 8 has information?

03:26:22 9 MR. NEUWIRTH: Not only will we help out, but I think
03:26:24 10 -- I think you're right, Chuck, and I'm not saying it was
03:26:26 11 intentional, but you misunderstood what I said or
03:26:30 12 mischaracterized it because what I said was the negative we
03:26:34 13 were being asked to prove, basically when you said, Tell us
03:26:36 14 the name of everybody in the company who participated or had
03:26:40 15 some direct or indirect involvement in trade association,
03:26:44 16 obviously leaving out janitors or secretaries, you would
03:26:48 17 really have to ask thousands of people at the company whether
03:26:52 18 they ever did that. If the question is, Here is a list of
03:26:54 19 names we gleaned from the documents, can you tell us who these
03:26:58 20 people are, of course we would answer that.

03:27:00 21 THE COURT: Without a formalistic process.

03:27:06 22 MR. GOODWIN: I mean, we have these 400 custodians
03:27:08 23 that they put a lit hold on. Could we find out if any of
03:27:12 24 those have had trade association involvement and one line of
03:27:16 25 what that involvement is? I mean, this would seem to me to be

03:27:18 1 an email to 400 people saying, Have you had anything to do
03:27:20 2 with these 14 associations, listing the names. If so, can you
03:27:24 3 tell me what you did? And it will take them about a week to
03:27:26 4 10 days to produce that.

03:27:28 5 THE COURT: Mr. Freed wants to speak.

03:27:30 6 MR. FREED: It just shows I don't know the
03:27:32 7 nitty-gritty even of our own request to this extent, to this
03:27:36 8 level of detail; but did we list the particular associations?
03:27:40 9 Because you mentioned five, all of which, of course, are well
03:27:44 10 recognized --

03:27:44 11 MR. NEUWIRTH: No, I read our list as much more than
03:27:48 12 five. I stopped in the middle of the list because we would be
03:27:50 13 here for 15 minutes.

03:27:52 14 MR. FREED: No, no, but you recognized those which
03:27:54 15 we're very familiar with.

03:27:56 16 What I'm saying is, would it help refine the process
03:27:58 17 if we said to you, Here are the six or seven or eight or 10
03:28:00 18 associations, or have we already gotten to that level of
03:28:04 19 detail?

03:28:04 20 MR. NEUWIRTH: We know what the associations are.

03:28:04 21 MR. GOODWIN: I think we all agree on what the
03:28:06 22 relevant associations are.

03:28:08 23 MR. NEUWIRTH: The problem is the breadth of what we
03:28:10 24 are being asked, direct or indirect involvement in trade
03:28:14 25 associations. And even for 400 people, that's a daunting

03:28:18 1 task.

03:28:20 2 MR. GOODWIN: Well, and the reason for raising
03:28:20 3 indirect, I mean, obviously, we are not trying to get the mail
03:28:24 4 room staff who carried the FedEx package from the fourth floor
03:28:28 5 to the mail room, but, your know, there are people,
03:28:30 6 presumably, who are putting together reporting information who
03:28:32 7 don't have a direct relationship with a trade association but
03:28:34 8 they are in charge of gathering information that goes into
03:28:36 9 that document.

03:28:40 10 MR. NEUWIRTH: Look, the breadth of what you are
03:28:42 11 asking us to do is tremendous, and the nature of that question
03:28:46 12 that you just posed means this is more than just an email.
03:28:50 13 It's an interview. It's a discussion. And I just think that
03:28:54 14 at this point in the process, you have all these documents
03:29:02 15 that you apparently didn't realize we had produced to you.
03:29:04 16 And what I just brought here was a sample. I actually have
03:29:10 17 the number of documents that we produced. We produced -- KPMG
03:29:16 18 said that the documents produced in response to this trade
03:29:20 19 association search string were 9,757 documents constituting
03:29:26 20 380,578 pages. And if you also include the attachments to
03:29:32 21 those documents, it's 493,933 pages.

03:29:38 22 THE COURT: All right. Now, Charles, for you,
03:29:44 23 yesterday's point of -- for you, it's trade associations.
03:29:48 24 Yesterday, it was committees; we were bigger on committees
03:29:52 25 yesterday and who was on what. So this is interesting also

03:30:00 1 how each of your team is going to take maybe a different
03:30:08 2 priority here too. And I say that only to show how human this
03:30:16 3 is.

03:30:16 4 MR. MOGIN: Actually, your Honor, I think it was more
03:30:18 5 of an attempt not to be going over the exact same issues day
03:30:22 6 after day.

03:30:22 7 THE COURT: Well, but, I mean --

03:30:28 8 MR. MOGIN: My point is --

03:30:28 9 THE COURT: -- until we figure out -- all right. I
03:30:32 10 have a different word. Okay? My sequential. I will give you
03:30:36 11 a preview of my word on the RFPs is instead of saying phases,
03:30:44 12 I am using the word sequential.

03:30:46 13 We are not going to be able to clear this up in a
03:30:50 14 three-week period of time on all 92 of them. We are not.
03:30:54 15 And, I mean, I think the only thing I can try to figure out is
03:31:02 16 to make some suggestions on how we can get to what is your
03:31:06 17 biggest priority at the moment, what is it that you need,
03:31:12 18 which is what I have been trying to get out of this, because
03:31:20 19 -- and how much -- one of the questions I had this morning is,
03:31:24 20 When do you anticipate roughly the production, and roughly,
03:31:28 21 they're going to tell us in two weeks when they can review
03:31:30 22 each one of these productions because it is so important that
03:31:36 23 they have enough time to do the review, and then we will know
03:31:38 24 when we can go on to the next.

03:31:42 25 MR. NEUWIRTH: In fairness.

03:31:42 1 THE COURT: Yes?

03:31:44 2 MR. NEUWIRTH: A chunk of our documents were produced

03:31:50 3 in 2011.

03:31:52 4 THE COURT: Okay.

03:31:52 5 MR. NEUWIRTH: Apparently, they were not uploaded or

03:31:56 6 reviewed at that time.

03:31:58 7 MR. WOZNIAK: That's not true.

03:32:00 8 MR. NEUWIRTH: Then I misread your letter. Whatever

03:32:02 9 they are.

03:32:02 10 MR. WOZNIAK: I can clarify it, if it helps.

03:32:04 11 THE COURT: Well, tell us. Tell us.

03:32:06 12 MR. WOZNIAK: I can tell you that at the last status

03:32:08 13 hearing, I think what I said was that GP's most recent

03:32:14 14 production had not --

03:32:16 15 MR. NEUWIRTH: Then I misunderstood.

03:32:18 16 MR. WOZNIAK: -- was not being subjected to human

03:32:20 17 review at that time.

03:32:20 18 THE COURT: Right.

03:32:20 19 MR. WOZNIAK: It is now. The previous productions

03:32:22 20 have largely, if not completely, been reviewed. And I know

03:32:26 21 that, for instance, the one document that Chuck passed around

03:32:28 22 earlier I think came from a January production.

03:32:30 23 MR. NEUWIRTH: Okay. Good.

03:32:32 24 MR. WOZNIAK: So the most recent production is

03:32:34 25 underway, earlier productions have largely or completely been

03:32:38 1 reviewed, so we are trying to keep things moving along as we
03:32:42 2 receive the productions.

03:32:42 3 THE COURT: Right. And nobody -- at least nobody
03:32:46 4 from the judiciary is doing anything except saying you're
03:32:50 5 doing a great job.

03:32:52 6 MR. NEUWIRTH: Right. And we're not -- my point was
03:32:54 7 not to say they are not doing a good or bad job. It was not
03:32:58 8 to opine on their job, but it was more to say -- and I clearly
03:33:04 9 misunderstood what was said at the last conference, so I'm
03:33:08 10 happy to hear you're going through them, thank you for the
03:33:08 11 clarification --

03:33:08 12 THE COURT: And then.

03:33:10 13 MR. NEUWIRTH: -- but -- I apologize, your Honor, for
03:33:12 14 cutting you off.

03:33:12 15 THE COURT: Go ahead.

03:33:12 16 MR. NEUWIRTH: I was just going to say that GP, apart
03:33:14 17 from the travel and very limited categories, is done with its
03:33:20 18 production based on what it said it would do so far, and so
03:33:24 19 there is a full set at this point that the plaintiffs have.
03:33:26 20 That's all I was going to say.

03:33:28 21 THE COURT: So I think getting the names, it's not
03:33:32 22 going to be the end-all, but this is iterative. But at least
03:33:34 23 getting the names of the litigation holds hopefully will help
03:33:40 24 put some structure.

03:33:44 25 MR. GOODWIN: As long as we are talking about trade

03:33:46 1 associations, I didn't want -- I mean, it dovetails a bit with
03:33:52 2 the custodian issue, and I just wanted to discuss Mr. Hannan
03:33:58 3 earlier.

03:33:58 4 THE COURT: Oh, yes.

03:34:00 5 MR. GOODWIN: But Mr. Hannan is an officer --

03:34:02 6 THE COURT: Who is he? I don't know.

03:34:04 7 MR. GOODWIN: He is the CEO of the company. He is an
03:34:08 8 officer of the American Forestry & Paper Association, which is
03:34:10 9 a trade group, which has a number of other CEOs of defendant
03:34:14 10 companies and other companies as officers of that
03:34:18 11 organization. He's quoted making speeches, which, of course,
03:34:22 12 are party admissions for our purposes here on the nature of
03:34:26 13 the industry to the Fibre Box Association, which is another
03:34:30 14 trade association.

03:34:32 15 We have asked nicely. We have been told he is not --
03:34:36 16 and this is a change -- I mean, this is one of the problems we
03:34:40 17 have is just with changing language here because whereas their
03:34:46 18 document responses talk about primary decisionmakers, GP tells
03:34:50 19 us that Hannan is going to be excluded as a custodian because
03:34:52 20 he is not a key decisionmaker in the day-to-day operation of
03:34:58 21 the containerboard business, which is -- it's a different
03:35:02 22 phrase, your Honor. It means something different than primary
03:35:04 23 decisionmaker. I think, by all colors, we have to call the
03:35:08 24 CEO a primary decision- -- I mean, the buck stops there.

03:35:16 25 THE COURT: Well, but, see, now, in the last day and

03:35:24 1 a half, I'd say we had a discussion. When the case kind of
03:35:28 2 started, it seemed like the key players were the big boys, and
03:35:36 3 now it seems like sales, marketing, and some of the people
03:35:42 4 down here, as Mr. Mogin loves to say, the Sherpas and -- you
03:35:50 5 know, that they are the Sherpas here. I am not saying you may
03:35:54 6 not want both, but it seemed to me that we're having some kind
03:36:02 7 of a redefinition of where the main sources might be. That's
03:36:06 8 all.

03:36:08 9 MR. FREED: It isn't, your Honor. It's a
03:36:10 10 redefinition --

03:36:10 11 THE COURT: Redefinition.

03:36:12 12 MR. FREED: -- in the sense of we have always, always
03:36:14 13 thought that the people at the top are important.

03:36:16 14 THE COURT: Okay.

03:36:16 15 MR. FREED: We don't think that the regional
03:36:18 16 salespeople get together and fix the prices, although I guess
03:36:22 17 that's not without precedent. What we are saying is what
03:36:24 18 happens with them as they go out and try to implement these
03:36:28 19 price increases or the way they chatter among themselves is
03:36:32 20 also relevant.

03:36:32 21 So it's not that we no longer think the senior people
03:36:36 22 -- nobody could be more relevant -- I mean, it's inconceivable
03:36:38 23 to me that the CEO of a company who is a member of one of the
03:36:42 24 major trade associations who is constantly speaking to the
03:36:46 25 press and organizations where other corporate executives are

03:36:50 1 in attendance wouldn't be a custodian. I think where the
03:37:00 2 defendant got exercised was we have just been exasperated on
03:37:02 3 this issue.

03:37:02 4 MS. McLEMORE: Can I explain something?

03:37:04 5 THE COURT: Yes. That's why we are so glad you are
03:37:08 6 here.

03:37:08 7 MS. McLEMORE: GP has numerous different businesses.
03:37:10 8 Containerboard and packaging is one.

03:37:12 9 THE COURT: Okay.

03:37:14 10 MS. McLEMORE: Okay?

03:37:14 11 THE COURT: Approximately how many others?

03:37:18 12 MS. McLEMORE: Well, in broad categories, we have
03:37:20 13 building products; we have containerboard and packaging; we
03:37:24 14 have chemicals which is underneath one of the other businesses
03:37:28 15 but is really a separate business; and then the cellulose
03:37:36 16 business is part of containerboard and packaging but really
03:37:38 17 has nothing to do with the businesses they're interested in;
03:37:44 18 we have our consumer products, which is things like Dixie, so
03:37:48 19 Dixie cups, Dixie plates and paper towels and toilet tissue
03:37:54 20 for commercial restrooms, those types of things.

03:37:58 21 Mr. Hannan sits over all of those businesses. Each
03:38:04 22 one of those businesses then has a president. Those are the
03:38:08 23 people who are running each business. And they have Christian
03:38:14 24 Fischer's name. Christian Fischer is the president of the
03:38:18 25 containerboard and packaging business. And with all due

03:38:20 1 respect, I think we know better who are the people at our
03:38:24 2 company who are involved in these kinds of decisions and who
03:38:32 3 are implementing the kinds of activities that are at issue in
03:38:36 4 the complaint. And Mr. Hannan simply is not one of them.

03:38:42 5 MR. GOODWIN: He is in paragraph 54, I believe, of
03:38:42 6 the complaint.

03:38:44 7 MR. NEUWIRTH: That is a fact. There are many things
03:38:46 8 in the complaint. And what the complaint does is reference a
03:38:52 9 speech -- in the entire complaint, there is one reference to I
03:38:58 10 think you quote from a speech, and I think the only thing that
03:39:02 11 you have here on this document is a reference to
03:39:04 12 correspondence between us and a quote from paragraph 54 of the
03:39:10 13 complaint, which I believe is the only place --

03:39:12 14 MR. GOODWIN: One is a quote, actually, from paper --
03:39:14 15 from Pulp & Paper Magazine. Is that the FBA's, the Fibre Box
03:39:22 16 Association --

03:39:22 17 MR. NEUWIRTH: Right, but that's a quote from the
03:39:24 18 complaint. That was in the complaint.

03:39:24 19 So let me just supplement what Mary said by a couple
03:39:28 20 of points.

03:39:30 21 I think it is very well established law that you
03:39:38 22 don't just get to go to the top officer of a giant company
03:39:44 23 because you want to do it, that you need to establish that
03:39:50 24 that officer has information that is not available from other
03:39:54 25 witnesses who might be more readily available, and Wes

03:40:00 1 Ferdinon (phonetic) to produce, as Ms. McLemore noted,
03:40:06 2 Christian Fischer is the head of the entire business at issue
03:40:06 3 in the case. He is the person who oversees everything about
03:40:10 4 containerboard and everything about packaging.

03:40:12 5 We would also respectfully point out to your Honor,
03:40:16 6 if I may go back to the boxes, that, in fact, we have produced
03:40:24 7 documents that relate to --

03:40:32 8 THE COURT: Mr. Hannan.

03:40:32 9 MR. NEUWIRTH: -- Mr. Hannan because to the extent
03:40:36 10 that there would be anything about him that's relevant, we
03:40:42 11 believed it would have shown up, for example, in the documents
03:40:48 12 of Mr. Fischer --

03:40:48 13 THE COURT: To Mr. Hannan.

03:40:50 14 MR. NEUWIRTH: Well, this is not even to Mr. Hannan.
03:40:52 15 It's just a reference to something about Mr. Hannan.

03:40:58 16 But what, again, we would respectfully suggest here
03:41:02 17 is that one option is for the plaintiffs to run a search for
03:41:06 18 Hannan in the documents that we produced. We think there are
03:41:10 19 a lot of ways that they could skin the cat here.

03:41:12 20 But our point is before jumping to the conclusion
03:41:16 21 that Mr. Hannan should be a custodian or a witness, let's work
03:41:22 22 with what we produced from the custodians that we have made a
03:41:28 23 good-faith effort to identify as the right custodians. And if
03:41:32 24 it emerges from those documents that there is a basis to talk
03:41:34 25 to Mr. Hannan or to get more from Mr. Hannan, we can discuss

03:41:40 1 that then, but I would put this in the same category as some
03:41:44 2 of the other topics we have looked at. There really are
03:41:46 3 things we produced that would demonstrate that he is not a
03:41:48 4 necessary witness. Let's look at those together and then come
03:41:56 5 back and talk if there is more to do.

03:41:58 6 MR. GOODWIN: There's some questions here.

03:42:00 7 MR. FREED: If I may, I'd like to say something. We
03:42:04 8 have known each other professionally, we actually were on the
03:42:06 9 same side of a case, so I have to reference a case we were
03:42:08 10 both involved in. And I say this -- it doesn't sound
03:42:14 11 respectful -- I think it's a ludicrous argument.

03:42:16 12 In the fructose case where we were on the same side
03:42:20 13 of the case, the businesses were run by Nick Andreas and Terry
03:42:26 14 Wilson. So that would be the same as saying you have no right
03:42:28 15 to get discovery of Duane Andreas because he is not involved
03:42:32 16 in the day-to-day operations of the business, yet he was a
03:42:38 17 very, very important person.

03:42:40 18 We are not looking for confrontation, we are not
03:42:42 19 looking to tee up arguments for resolution, but if we are at
03:42:46 20 the point now where this is their position, we would
03:42:50 21 respectfully ask for the opportunity to put this to a motion
03:42:54 22 because I think this is so out of bounds in terms of saying
03:42:58 23 counsel said -- he's at the top of every part of the
03:43:02 24 organization, including the part of the organization
03:43:06 25 containerboard and boxes which this case is about, and they

03:43:08 1 report to him. And if there is a conspiracy at this higher
03:43:12 2 level of executive, the notion that he wouldn't somehow be
03:43:18 3 involved or knowledgeable just -- it runs contrary to sense,
03:43:22 4 law, and experience.

03:43:24 5 MR. MOGIN: I might also add, your Honor, that if
03:43:28 6 this is illustrative of the process that GP is putting forth
03:43:32 7 and this is their idea of a reasonable basis for adding
03:43:36 8 custodians, this is utterly unworkable. If ever there is
03:43:42 9 somebody that we have demonstrated a reasonable basis for,
03:43:46 10 it's Mr. Hannan.

03:43:46 11 THE COURT: Okay. Yes. Tell us. Your turn to
03:43:52 12 speak.

03:43:52 13 MS. McLEMORE: We told them in a letter he is a
03:43:58 14 custodian. He has been put on the litigation hold. He has --
03:44:04 15 we haven't processed his documents and produced them, but he
03:44:08 16 is on the litigation hold. His documents are going nowhere.

03:44:12 17 THE COURT: So he's -- there is a preservation hold.

03:44:16 18 MS. McLEMORE: That's correct.

03:44:18 19 THE COURT: That was my question.

03:44:18 20 MS. McLEMORE: That's correct.

03:44:18 21 The one speech that they referenced has been produced
03:44:22 22 because, again, it was in the files of the people that we have
03:44:26 23 identified as the most likely people to have responsive
03:44:30 24 documents. Mr. Hannan doesn't have a copy of that speech.

03:44:36 25 And we have told them that after they look at the

03:44:40 1 documents, if they have a good-faith basis to say, Please
03:44:44 2 process these documents and produce them, we are willing to do
03:44:50 3 that. The documents are going nowhere.

03:44:54 4 MR. GOODWIN: How do we know that Mr. Hannan doesn't
03:44:56 5 have a copy of that speech when we haven't looked at his
03:44:58 6 documents? You said you loaded them up but you didn't search
03:45:00 7 them.

03:45:02 8 MS. McLEMORE: I asked them.

03:45:02 9 THE COURT: Because they knew this was going to come
03:45:04 10 up today.

03:45:06 11 MR. GOODWIN: Right. And have you admitted -- his
03:45:06 12 documents have already been segregated now and are subject to
03:45:08 13 snapshot or whatever, so his documents can be searched without
03:45:10 14 any inconvenience to Mr. Hannan; is that correct, Counsel?
03:45:14 15 You said his documents have been grabbed --

03:45:16 16 THE COURT: Why are you doing this, Charles?

03:45:18 17 MR. GOODWIN: I'm sorry. You're right, I am losing
03:45:20 18 my temper. Pardon me, your Honor.

03:45:22 19 THE COURT: You are setting the tone here. We are
03:45:24 20 trying to have a discussion. Okay?

03:45:26 21 MR. GOODWIN: Your Honor is correct, I am losing it.
03:45:28 22 Maybe it would be a good time for a comfort break because I am
03:45:32 23 very angry, your Honor. I really am. I apologize.

03:45:36 24 THE COURT: I think this would be a good time for a
03:45:36 25 break. Let's come back at 4:00 o'clock.

03:45:40 1 MR. FREED: Thank you, your Honor.

03:45:48 2 THE COURT: You're going to be out of here, guys, for
03:45:50 3 your plane at 5:00 o'clock.

03:45:52 4 MR. NEUWIRTH: I actually need to leave at 5:00.

03:45:56 5 THE COURT: You can leave your boxes here, and they
03:45:58 6 can pick them up.

03:45:58 7 MR. NEUWIRTH: That is fabulous.

03:46:00 8 THE COURT: So you don't have to worry about that.

03:46:06 9 (Short break.)

04:07:42 10 MR. NEUWIRTH: We've tried to listen carefully to
04:07:46 11 your Honor today and the objectives that you've set out which
04:07:50 12 we think are consistent with what we hoped to achieve as well,
04:07:56 13 and -- or I should more politely say what we hope to achieve
04:08:04 14 is what your Honor set out. And during the break,
04:08:06 15 Ms. McLemore and I spoke, and although we believe that there
04:08:12 16 would be good reasons to maintain the position that we have
04:08:18 17 maintained with respect to Mr. Hannan, in an effort to advance
04:08:24 18 the process, what we'd like to propose, if it would please
04:08:28 19 your Honor, is that if again there is an understanding that
04:08:36 20 this does not automatically mean that Mr. Hannan becomes a
04:08:40 21 witness for deposition or trial testimony and if it would
04:08:46 22 please the court to enter an order to that effect, that our
04:08:52 23 doing this does not mean that and that the regular standards
04:08:56 24 for deposing a person of his position at the company would
04:09:00 25 apply, we'd be prepared to turn over -- to treat him as a

04:09:06 1 custodian and to produce the documents from his files to the
04:09:10 2 extent they exist.

04:09:16 3 MR. GOODWIN: I need to confer with my other
04:09:36 4 colleagues.

04:09:38 5 THE COURT: Yes.

04:09:40 6 MR. MOGIN: It's consistent with what we have been
04:09:42 7 asking for from us.

04:09:44 8 MR. GOODWIN: Reserving to what the appropriate
04:09:46 9 standard is to depose a CEO, because I imagine that we won't
04:09:50 10 see eye to eye on that one what the law is there.

04:09:54 11 MR. FREED: We understand they are reserving their
04:09:56 12 right. They said it on the record. We get that.

04:10:00 13 MR. NEUWIRTH: We would just request, your Honor,
04:10:02 14 again, if it would please your Honor, given that we are in a
04:10:06 15 circumstance where this issue could come up again at a time
04:10:10 16 when your Honor is no longer here.

04:10:14 17 THE COURT: My demise.

04:10:16 18 MR. NEUWIRTH: Although we would be happy to support
04:10:18 19 an extension so you could keep working on the case.

04:10:22 20 But to the extent that that possibility exists again,
04:10:26 21 without -- with respect, we would ask, if it please your
04:10:30 22 Honor, to do an -- to have it be a provision of the order we
04:10:36 23 talked about earlier with reserving everybody's rights to take
04:10:40 24 a position that that would be helpful to us so that there
04:10:44 25 wouldn't be any misunderstandings in the future.

04:10:46 1 THE COURT: So Chris and I will work on some language
04:10:48 2 before we enter it. We will send it to the both of you.

04:10:52 3 MR. NEUWIRTH: Thank you.

04:10:52 4 THE COURT: This probably isn't going to happen until
04:10:54 5 Monday on this particular thing.

04:10:56 6 MR. NEUWIRTH: Thank you, your Honor.

04:10:56 7 THE COURT: And it will try to capture both the
04:10:58 8 spirit and why you may want this particular protection or this
04:11:06 9 particular extra language here.

04:11:08 10 MR. NEUWIRTH: Thank you, your Honor.

04:11:08 11 MR. FREED: We appreciate the compromise.

04:11:10 12 THE COURT: I was just going to say, thank you very
04:11:14 13 much.

04:11:14 14 So far, this has been a motionless case. I mean, do
04:11:20 15 you know that? I mean, for every penny you're paying, at
04:11:26 16 least you are not paying for any motions and you're also not
04:11:30 17 waiting for the court to rule on motions. I mean, that's the
04:11:34 18 part that I think is actually quicker and cheaper.

04:11:40 19 MS. McLEMORE: I don't think you have any clue how
04:11:42 20 much money we have spent so far.

04:11:44 21 THE COURT: No, but it is -- I mean, with this
04:11:48 22 mammoth amount that's going on that you have done this in a
04:11:52 23 year is phenomenal to me.

04:11:54 24 MS. McLEMORE: I can only tell you, your Honor, that
04:11:56 25 we have a lot of big cases. This is only one of them. This

04:11:58 1 case has cost us more money than any other case, and we are
04:12:04 2 nowhere close to the end of discovery.

04:12:06 3 THE COURT: That's interesting. Right.

04:12:08 4 MS. McLEMORE: So I mean, you just have to
04:12:08 5 understand, with respect to Mr. Hannan, we now have to get his
04:12:14 6 documents to our vendors, load them onto the platform, have
04:12:18 7 all of the processing done, have them reviewed --

04:12:22 8 THE COURT: You are only doing his that relate to the
04:12:24 9 container --

04:12:26 10 MS. McLEMORE: Correct.

04:12:26 11 MR. NEUWIRTH: But we are using --

04:12:28 12 THE COURT: The same standard.

04:12:28 13 MR. NEUWIRTH: Whatever we did for any other
04:12:30 14 custodian, we will do for him, which is it's not a simple
04:12:34 15 process --

04:12:34 16 THE COURT: Right.

04:12:36 17 MR. NEUWIRTH: -- as Ms. McLemore was pointing out.
04:12:36 18 And I think --

04:12:38 19 THE COURT: No, this is a huge -- as far as -- I
04:12:44 20 mean, Chris and I, just in the minute we had, I mean -- part
04:12:46 21 of what I am trying to do here is to get information, but it's
04:12:52 22 also to set the tone. And so what you have just offered has
04:12:56 23 really gone like so far as far as setting the tone and
04:13:00 24 continuing to work together, so thank you.

04:13:04 25 Let's do something simple now. Okay? How about word

04:13:12 1 index? How about that? Shouldn't that be like simple?

04:13:18 2 What I am trying to do before you come back in two
04:13:20 3 and a half weeks is I want to see what issues we can take off
04:13:24 4 the table. So what I am doing on some of these things is I am
04:13:28 5 just asking is there any issue. So you have given your word
04:13:34 6 index.

04:13:34 7 MR. NEUWIRTH: Subject to the constraint we described
04:13:36 8 to the plaintiffs that I think there was one aspect of the
04:13:40 9 information they were looking for which, after many weeks of
04:13:46 10 trying, KPMG advised us --

04:13:52 11 THE COURT: They can't do.

04:13:50 12 MR. NEUWIRTH: -- it could not do.

04:13:52 13 THE COURT: Is that the same as -- no.

04:13:54 14 MR. MOGIN: They can't give us the document count.
04:13:58 15 They can just give us the word count.

04:14:00 16 THE COURT: Okay. All right.

04:14:02 17 MR. FREED: Is that the Clearwell issue?

04:14:04 18 THE COURT: Is that Clearwell?

04:14:06 19 MR. NEUWIRTH: It's not a Clearwell issue because
04:14:08 20 this was actually done -- Clearwell was used for the process
04:14:12 21 we described to the court, which was something that might
04:14:16 22 generally be called the early case assessment process, but it
04:14:24 23 was the KPMG platform on which all the documents were uploaded
04:14:28 24 for the review and production, and it was within that context
04:14:30 25 that they faced the constraints.

04:14:32 1 But I can assure you, while I wasn't in the room with
04:14:36 2 them, having seen what happened, I know they were really
04:14:38 3 trying, and that in itself, just the trying was expensive.

04:14:40 4 THE COURT: Right.

04:14:42 5 MR. MOGIN: But we still have the issue about the
04:14:44 6 non-hits.

04:14:48 7 THE COURT: Okay. So this is how I had to do -- this
04:14:52 8 is like word index for dummies. So we made -- the first
04:15:02 9 column over here was the word, second is the -- no, this is
04:15:08 10 the hits -- no, the hits are over here.

04:15:10 11 This is the number of documents, right, is in the
04:15:14 12 middle, guys? Is that what -- where is my -- I will show you.

04:15:22 13 Here. Okay. This is the one we were working off of.
04:15:26 14 This is the number of docs. This is the number of hits. As
04:15:30 15 you said in your opening, when we are -- you are moving
04:15:38 16 towards developing a plan, an overall plan for phase one
04:15:44 17 before we would go to phase two that at the end of phase one,
04:15:48 18 we were talking about some kind of verification validation.

04:15:56 19 My question that Chris and I came up with on our own,
04:15:58 20 and I haven't gotten any agreement from the plaintiffs on
04:16:02 21 this, but if you added a fourth column to this, which is what
04:16:10 22 Mr. Mogin would like here, so I know he'd like this part, but
04:16:14 23 I am not saying that he agrees with me that this could be the
04:16:18 24 verification, words that are in the document that got no hits,
04:16:26 25 right?

04:16:28 1 MR. CAMPBELL: Right.

04:16:30 2 THE COURT: So it's kind of the null set.

04:16:32 3 MR. NEUWIRTH: So it's doing the same exercise --

04:16:34 4 THE COURT: Right.

04:16:34 5 MR. NEUWIRTH: -- to the documents that were not hit
04:16:36 6 by the search terms as opposed to the documents that were.

04:16:38 7 THE COURT: Right. So all I am asking you for today
04:16:40 8 is before you come back -- this is something he says he would
04:16:44 9 like done. I am thinking -- because one of your homework
04:16:50 10 assignments for the next is to come back with each of your
04:16:56 11 ideas on verification, I am suggesting would you think about
04:16:58 12 this for the next two weeks, would this be something you could
04:17:04 13 sign on? And they haven't signed on that this would be the
04:17:08 14 verification, but at least I want to know what your thoughts
04:17:10 15 are.

04:17:12 16 MR. NEUWIRTH: Okay.

04:17:12 17 THE COURT: With your Clearwell problem, that
04:17:18 18 wouldn't be a problem with --

04:17:20 19 MR. NEUWIRTH: Well, we could do to the null set what
04:17:24 20 we did to the hit set. It would just again have two columns
04:17:30 21 rather than three.

04:17:32 22 THE COURT: I see.

04:17:34 23 MR. NEUWIRTH: For us. For the other defendants -- I
04:17:36 24 think IP and GP both ran into the same problem.

04:17:40 25 THE COURT: Okay.

04:17:40 1 MR. NEUWIRTH: But I think that the other defendants
04:17:44 2 were able. So at least if you used that method -- again, I am
04:17:48 3 not opining on whether -- I am just saying if you use that
04:17:52 4 method, you would have, I think, five defendants that would
04:17:54 5 give all three columns and two that would give two, so you
04:17:58 6 would have a lot of information.

04:17:58 7 THE COURT: Right.

04:18:04 8 Did we discuss -- this is how much the two days are
04:18:08 9 blurring together on me.

04:18:20 10 Have we talked about your backup tapes?

04:18:24 11 MR. NEUWIRTH: Yes, we did. We did.

04:18:26 12 THE COURT: No, what I want to talk --

04:18:26 13 MR. NEUWIRTH: That was a joke, Madam Court Reporter.

04:18:30 14 THE COURT: What I want to talk about is if the
04:18:34 15 plaintiffs understand your backup tapes and what -- in fact,
04:18:40 16 if they are indexable is a word I made up, or if they have got
04:18:50 17 searchable -- if they are searchable, if you have an index,
04:18:54 18 and what it consists of. I'm assuming you did this at the
04:19:00 19 30(b)(6), but I am being a good mediator here, I should know
04:19:04 20 what it is too.

04:19:06 21 So what's the story? Charles.

04:19:08 22 MR. GOODWIN: First of all, we haven't had a 30(b)(6)
04:19:10 23 yet, but that's neither here nor there. I think -- my
04:19:14 24 understanding, or plaintiffs' understanding, really, is that
04:19:18 25 at least officially, GP's backup tapes or backup media is a

04:19:24 1 look back of a relatively short period of time, whether it's
04:19:30 2 three days, a week, or two months is immaterial, so that the
04:19:36 3 backup material or the backups -- the backup, in other words,
04:19:44 4 is for disaster recovery, so if the plant burned -- I guess
04:19:48 5 the office burns down today, you can bring the computers back
04:19:52 6 to, you know, yesterday's data a week from now when you are in
04:19:56 7 temporary offices.

04:19:58 8 And I think we have established that there is no sort
04:20:02 9 of archival backing up. I think we raised the question of
04:20:10 10 what GP does to preserve the documents it must preserve, and I
04:20:14 11 believe the response at that point was to refer us -- such as
04:20:20 12 contracts and that sort of thing, was to refer us to the
04:20:22 13 document retention policies as their sole description of how
04:20:28 14 that sort of thing was preserved where you didn't need to have
04:20:38 15 some sort of archive. I assume there are many other types of
04:20:40 16 corporate -- you know, personnel records, things that you have
04:20:42 17 to -- expense records, things that have to go back for IRS
04:20:44 18 purposes.

04:20:46 19 I think one area of dispute we have had is really
04:20:56 20 whether there's been any point in time when GP hasn't followed
04:21:02 21 -- or I should say GP staff hasn't followed the stated policy
04:21:06 22 but has -- for reasons we shouldn't even speculate about, but
04:21:10 23 has set aside or created archival backups for their own
04:21:16 24 purposes -- when I say their own purposes, for the purposes
04:21:18 25 that an employee, thinking he is actually doing his job and

04:21:22 1 thinking it's important perhaps to exceed his job description
04:21:24 2 or sometimes break the stated rules of the job to accomplish
04:21:26 3 the objective of the job, might have decided to set aside
04:21:32 4 tapes. And I believe we have asked GP to survey the relevant
04:21:38 5 -- at least informally to survey the relevant I.T. personnel
04:21:42 6 to verify that there is none of that sort of, you know,
04:21:46 7 underground archiving of data just because it's a good idea to
04:21:50 8 do that in somebody's estimation.

04:21:52 9 THE COURT: In a formal -- or like Temple-Inland,
04:21:56 10 they found 77 on somebody's floor.

04:22:00 11 MR. WOZNIAK: 700.

04:22:02 12 THE COURT: 700. So do you mean it like --

04:22:06 13 MR. GOODWIN: Yeah, to make sure that hasn't gone on
04:22:10 14 at GP. I think what Mary has given us is a logical
04:22:14 15 explanation of why that couldn't be so, but that's -- at least
04:22:16 16 to me, that doesn't give me the same comfort as we sent an
04:22:20 17 email to the relevant I.T. staff and asked them all whether
04:22:22 18 they had ever, you know, secured backups, you know, maintained
04:22:28 19 or retained backup tapes other than as provided in the policy
04:22:32 20 and just gotten the negative answer to that question or found
04:22:36 21 out if there was one guy who just thought it was -- if he was
04:22:40 22 really going to do his job the right way, he was really going
04:22:44 23 to save stuff because somebody would want that document down
04:22:48 24 the road and make sure.

04:22:48 25 THE COURT: Okay. Is that accurate? When somebody

04:22:52 1 outside is describing your system, do you think that's --

04:22:58 2 MR. NEUWIRTH: Well, I think the first part about the
04:23:00 3 nature of the backups that exist is generally accurate. I
04:23:08 4 think the issue that's been identified that you just heard
04:23:14 5 about was this question of what is the method we should have
04:23:20 6 to go through to prove the negative that there wasn't someone
04:23:24 7 violating company policy and perhaps the law sequestering
04:23:28 8 things away.

04:23:30 9 Now, my understanding of the Temple-Inland situation
04:23:34 10 is that it was an extraordinary situation involving, you know,
04:23:38 11 a particular circumstance with a particular employee that I
04:23:40 12 would suggest is not a predictor of the likelihood that
04:23:46 13 something like that would happen at any other company.

04:23:50 14 And when this issue first came up -- and I say this
04:23:52 15 not to mischaracterize the issue but just to explain why it's
04:23:58 16 so hard for us. When this issue first came up, the example
04:24:02 17 that Chuck gave was an employee who is worried about a
04:24:08 18 corporate policy to get rid of documents because that employee
04:24:12 19 thinks the documents would be wanted sometime and takes them
04:24:14 20 home and puts them in his garage or her garage.

04:24:16 21 THE COURT: Yes.

04:24:18 22 MR. NEUWIRTH: And, you know, again, I can't prove to
04:24:20 23 you -- no one can prove to you that no one at Georgia-Pacific
04:24:24 24 ever did something like that, but the notion that we should
04:24:26 25 have to go and ask every employee of Georgia-Pacific who had

04:24:30 1 access to documents whether they ever did that or who was ever
04:24:36 2 involved in I.T. backup if they ever did that, putting aside
04:24:40 3 how daunting a task it is, it just seems unreasonable in the
04:24:44 4 absence of some prima facie showing that there is a reason to
04:24:48 5 believe something like that happened.

04:24:54 6 MR. GOODWIN: It seems to me this is, you know, the
04:25:00 7 email era, and really we are talking about I.T. staff, maybe
04:25:06 8 two or three people at a location. And it may be, you know,
04:25:08 9 well, we have had a bunch of discussions of why this could be,
04:25:14 10 it could just be, We upgraded our tape deck, or whatever you
04:25:16 11 call the dohickey, and you know what? We just didn't throw
04:25:20 12 out the last set of a cassettes from the prior one and they
04:25:24 13 are sitting back in a room somewhere. And it's just a matter
04:25:26 14 of emailing people and saying, Do you know of any backup media
04:25:30 15 that have been kept somewhere?

04:25:32 16 And it's easy -- I mean, we have -- in my office, we
04:25:36 17 have like voting buttons on our emails, and if you open the
04:25:38 18 email, it's like sort of the final step in our conflicts
04:25:42 19 check, can we sue and so, and we send an email to all the
04:25:46 20 lawyers, and sometimes people, you know, say, Press that no,
04:25:48 21 you can't sue them button, and you will find out a reason why
04:25:52 22 you can't bring the case you wanted to bring. And it just
04:25:54 23 seems like an easy enough --

04:25:58 24 THE COURT: Well, even if it were easy enough, I
04:26:02 25 mean, I think it's a question -- I was asking so much more

04:26:06 1 basic of trying -- in data and fact gathering here. I was
04:26:12 2 really talking about basic information that I think you're
04:26:18 3 entitled -- that I'm much more concerned about, like we did
04:26:24 4 this morning. And it isn't fair; you weren't here this
04:26:28 5 morning. I mean, I thought that was really good to find
04:26:36 6 out -- so let me go to you and say, so your backup system, if
04:26:44 7 that needs to be -- if we need to get to that, because I have
04:26:48 8 been talking all the way through the backup tapes, what you
04:26:52 9 have produced already has been from active data?

04:26:56 10 MR. NEUWIRTH: It's been from active data, but I
04:26:58 11 should say, as we pointed out in our submissions, there is a
04:27:00 12 lot of material from earlier years that's included in our
04:27:04 13 production. I don't have the piles to show you, but I can
04:27:06 14 tell you that we --

04:27:10 15 THE COURT: So your active data does go back?

04:27:12 16 MR. NEUWIRTH: We produced 23,248 emails from 2004;
04:27:18 17 19,354 from 2005; 10,000 from 2006; 18,000 from 2007; 22,000
04:27:28 18 from 2008; et cetera. And we have provided all that
04:27:32 19 information to the plaintiffs.

04:27:34 20 And so we understood one of Mr. Mogin's concerns
04:27:36 21 about the process was that it might not capture older
04:27:40 22 material.

04:27:42 23 THE COURT: Right.

04:27:42 24 MR. NEUWIRTH: But I believe our process has, and
04:27:46 25 so --

04:27:48 1 THE COURT: So this may not be an issue.

04:27:48 2 MR. NEUWIRTH: -- for GP, it may not be an issue,
04:27:50 3 combined with the fact that, as Mr. Goodwin noted, there isn't
04:27:54 4 a lot of old backup material that still exists anyway.

04:27:58 5 MR. GOODWIN: And I was just trying to prove -- since
04:28:00 6 the backup -- it's not what we would call archival backup
04:28:06 7 where I have on some floppy disks in my attic all those papers
04:28:10 8 I wrote in college.

04:28:14 9 We've got their representation that sort of thing
04:28:16 10 doesn't happen, at least as a matter of policy, and I will
04:28:20 11 have to double-check and confirm whether that policy has been
04:28:24 12 consistent throughout the relevant period. My recollection is
04:28:26 13 that it has, but I am not looking at those papers right now,
04:28:30 14 so I don't know.

04:28:34 15 You know, and it's a question of whether -- I mean,
04:28:36 16 you know, if the backup tape is, you know, a week before, you
04:28:42 17 know, whatever D-Day was, it's not so interesting to us, at
04:28:46 18 least at this point. It may change later if there was an
04:28:52 19 opportunity for some spoliation, which we will find out, I
04:28:58 20 know that's a loaded term, but if there is an employee who for
04:29:00 21 some reason is uncomfortable with the contents of these files
04:29:06 22 and decides to get rid of them a lot and, you know, on D-Day,
04:29:10 23 and there is a D-Day minus seven days tape out there, that
04:29:16 24 circumstance is something we'd visit.

04:29:16 25 But I don't think that -- you know, assuming

04:29:20 1 everything was Kosher right now, I don't think we have much
04:29:24 2 interest in what's on the backup media unless there is
04:29:26 3 something from further in the past. I am just thinking from
04:29:28 4 the way Mr. Wozniak was rustling papers, he might have
04:29:32 5 something to say about --

04:29:34 6 MR. WOZNIAK: No, I just wanted to verify which
04:29:36 7 document Steve was reading off of on the email counts?

04:29:40 8 MR. NEUWIRTH: It's my own notes for this meeting.
04:29:42 9 But we previously gave you a letter that had -- there were two
04:29:46 10 different numbers. Today I only provided one. We gave you
04:29:50 11 numbers about emails and we gave you emails plus attachments.

04:29:56 12 MR. WOZNIAK: And just to confirm --

04:29:56 13 MR. NEUWIRTH: And that was in the letter that we
04:29:58 14 sent you in response to Chuck's letter about the meet and
04:30:02 15 confer. We sent it to you several weeks ago, and all of these
04:30:06 16 numbers were also in the status report that we gave to the
04:30:10 17 court that you have all had for a couple of weeks.

04:30:12 18 MR. WOZNIAK: I am not questioning that we haven't
04:30:14 19 seen it. I just was verifying what the source was. And I
04:30:16 20 just wanted to confirm, I can look back at this myself,
04:30:20 21 obviously, but are those the numbers from all of GP's
04:30:24 22 productions to date, I assume?

04:30:24 23 MR. NEUWIRTH: It's the total amount we produced as
04:30:26 24 of the time we gave you the list, as of the time of the last
04:30:32 25 meet and confer that we had in Chicago I think on April 14th

04:30:36 1 with Chuck and Nick.

04:30:38 2 MR. WOZNIAK: We will go back and make sure that our
04:30:40 3 numbers check out.

04:30:42 4 MR. GOODWIN: Our analytics are different, but maybe
04:30:44 5 we need to work more on our analytics.

04:30:48 6 MR. WOZNIAK: I know that we've looked, for instance,
04:30:48 7 at the most recent GP production, which our vendor tells us
04:30:54 8 includes something close to 11,000 emails. And as you go back
04:30:58 9 in time, there were relatively very few from the early years
04:31:00 10 of the relevant period.

04:31:02 11 So we will look at our numbers again. I don't want
04:31:04 12 to sort of get into a dispute about this now because I don't
04:31:08 13 want to question the accuracy --

04:31:08 14 MR. NEUWIRTH: I think the dispute may be -- and if I
04:31:12 15 used the word "produced," I may have misspoke. What we have
04:31:16 16 always said is, These are the numbers of what was collected
04:31:18 17 from the search terms and then there was the production. So
04:31:22 18 the absolute production numbers may be lower, and I apologize
04:31:26 19 if I used the word produced because that would have been the
04:31:28 20 wrong word.

04:31:28 21 MR. GOODWIN: Although that would be if there was
04:31:30 22 some reason that the search terms -- I mean, just speaking
04:31:34 23 from my dark past in doing some statistics, if for some reason
04:31:38 24 the frequency of hits was to diminish as we go back further in
04:31:42 25 time for your Boolean search terms, that's probably something

04:31:48 1 we should talk about because that's kind of weird.

04:31:52 2 MR. NEUWIRTH: I don't think it's weird at all. It's
04:31:54 3 not weird. It reflects the fact that fewer documents exist
04:31:58 4 from many years ago.

04:32:00 5 MR. GOODWIN: Maybe I didn't speak clearly, but the
04:32:02 6 percentage. In other words, if 5 percent of the documents
04:32:04 7 today contain FBA for the Fibre Box Association acronym from,
04:32:10 8 you know, 2010, contained FBA, we have 5 percent and 1 percent
04:32:18 9 from the 2004 documents, there is a question of why would, you
04:32:22 10 know, the reference to FBA be so much more common in the
04:32:26 11 recent documents and in the old documents -- and this -- we
04:32:30 12 are really getting into the tall grass here.

04:32:32 13 THE COURT: Yeah.

04:32:32 14 MR. GOODWIN: So it's probably better that we not use
04:32:36 15 the magistrate's time --

04:32:38 16 MR. NEUWIRTH: Well, no, but I think there is a
04:32:38 17 different problem. I would respectfully say, Chuck, you and I
04:32:42 18 worked together a lot, but I think what you are doing now is
04:32:46 19 like me saying, You know, Saturn and Jupiter might hit each
04:32:50 20 other tomorrow, so let's worry about that. There is no prima
04:32:52 21 facie basis for any of the things you just said, just like
04:32:56 22 there is no prima facie basis for the reference that both you
04:33:00 23 and Mike made to the spoliation.

04:33:04 24 All that we're saying is when I said at the beginning
04:33:06 25 I want to talk about facts, let's address problems that are

04:33:08 1 rooted in some basis for raising a problem, not speculation
04:33:12 2 about things that might happen when -- what you just talked
04:33:16 3 about is something you can check.

04:33:18 4 MR. GOODWIN: Well, actually --

04:33:18 5 MR. NEUWIRTH: And if you check it and you see an
04:33:20 6 issue, come back and talk to us.

04:33:22 7 MR. GOODWIN: Steve, that's why I flagged the point
04:33:24 8 that our analytics are different from your analytics. You
04:33:32 9 made a possible verbal correction to your prior statement to
04:33:34 10 the court. We want to be absolutely one hundred percent our
04:33:38 11 analytics are correct before we use the court's time and your
04:33:42 12 time with them; but if our analytics are telling us something
04:33:46 13 very different from what your analytics are telling you, and
04:33:48 14 if there is a difference in the analytics from the global --
04:33:52 15 whatever you call it, the null set plus the produced set,
04:33:56 16 between the global analytics for the big bucket and the
04:34:00 17 analytics for the small bucket --

04:34:04 18 THE COURT: So that's something --

04:34:04 19 MR. GOODWIN: -- that's an interesting question.

04:34:06 20 THE COURT: But that's something maybe we should
04:34:08 21 write into the process going forward is even --

04:34:14 22 MR. GOODWIN: Right.

04:34:14 23 THE COURT: I mean, actually, that might be an
04:34:16 24 interesting thing that I never thought of.

04:34:18 25 MR. NEUWIRTH: Your Honor, it's interesting, but I

04:34:20 1 can assure you, because I am certain, that Mr. Goodwin doesn't
04:34:24 2 have any of those statistics even in front of him as he is
04:34:30 3 speculating about the prospect --

04:34:30 4 MR. GOODWIN: I defer to Mr. Wozniak --

04:34:32 5 MR. WOZNIAK: I mean, I can say with a fair degree of
04:34:36 6 confidence that based on the metadata that was provided with
04:34:40 7 the most recent Georgia-Pacific production, if you go back in
04:34:42 8 time, the number of emails that were produced to us is
04:34:44 9 dramatically lower for the earlier portions of the class
04:34:48 10 period. So I am talking a big disparity. In fact, it goes
04:34:52 11 down -- 2008 and 2007 are surprisingly very similar in the
04:34:56 12 counts. You go back to 2006, it drops way off. And then 2005
04:35:00 13 is down about as low as 2006 and not much more of a drop-off
04:35:04 14 to 2004, but it's noticeable. I can pass this around.

04:35:08 15 MR. NEUWIRTH: It's consistent with my numbers. Our
04:35:10 16 number for 2010 is 64,000. Our number for 2006 is 10,000.

04:35:16 17 MR. WOZNIAK: Right. And I am talking about a number
04:35:18 18 here of over 3,000 for 2010 and down to fewer than 300 for
04:35:24 19 2004.

04:35:28 20 THE COURT: Well, that's something -- again, don't
04:35:32 21 you think when you start the review, when you really get into
04:35:36 22 the review, you're going to have a little bit more concrete to
04:35:42 23 discuss.

04:35:42 24 MR. WOZNIAK: We will certainly build on this very
04:35:44 25 sort of -- you know, this is sort of aggregate data. It only

04:35:48 1 tells you what it tells you.

04:35:50 2 THE COURT: Yes.

04:35:50 3 MR. WOZNIAK: We will certainly have much more to say
04:35:52 4 once we have substantially completed the substantive review of
04:35:56 5 the documents.

04:35:56 6 THE COURT: Right.

04:35:56 7 MR. WOZNIAK: But I think this is rather telling in
04:35:58 8 terms of the concerns we have about active versus inactive
04:36:04 9 data.

04:36:04 10 THE COURT: Right.

04:36:04 11 MR. MOGIN: As well as the difference between search
04:36:08 12 terms, the hits and what's getting produced to us.

04:36:12 13 THE COURT: Well, again, I think you guys are doing
04:36:16 14 great, but that's -- what do I know? I am a criminal defense
04:36:22 15 lawyer who never got any discovery. I take that. I
04:36:26 16 understand that. I had to go do my own investigation.

04:36:28 17 Okay. So do you want to talk about -- have you
04:36:40 18 reached -- because if you have reached, I don't want to go
04:36:42 19 there. Have you reached an accommodation on the 30(b)(6), or
04:36:46 20 is that something that we need to work out?

04:36:50 21 MR. NEUWIRTH: We, I have to say, have been confused
04:36:54 22 because we told the plaintiffs I don't know if it was months
04:37:02 23 or at least many weeks ago that we were prepared to do a
04:37:06 24 30(b)(6) deposition notwithstanding --

04:37:10 25 THE COURT: All your letters.

04:37:10 1 MR. NEUWIRTH: Well, notwithstanding the fact that we
04:37:14 2 believe written responses are going to be more helpful on many
04:37:18 3 of the topics, but for whatever reason, the plaintiffs have
04:37:20 4 not told us they want to take the deposition, notwithstanding
04:37:24 5 they took all the others.

04:37:24 6 MR. GOODWIN: Well, your Honor, if you look at tab
04:37:26 7 A-8 in Mr. Neuwirth's rather helpful binder, and at the back,
04:37:30 8 this is a letter from Mr. Greenwold (phonetic) to me, and I am
04:37:36 9 not proposing that we work out all the disputes here, but in
04:37:40 10 that letter, you will find from pages 2 forward --

04:37:46 11 THE COURT: A-8?

04:37:48 12 MR. GOODWIN: A-8.

04:37:54 13 THE COURT: A-8. Here it is.

04:37:58 14 MR. GOODWIN: And starting on the third page of the
04:38:00 15 letter and proceeding through the eighth page of the letter,
04:38:04 16 there's sort of a very casual -- I was really trying to put
04:38:08 17 things in practical terms when I devised this outline of sort
04:38:12 18 of discussionary (sic) as it were then important. And the
04:38:20 19 crossed-through stuff, it's a tongue twister there, is the
04:38:24 20 stuff that GP objected to for one reason or another to having
04:38:28 21 discussed the 30(b)(6) deposition, and that's sort of where
04:38:36 22 our discussions broke down on the 30(b)(6) route. And maybe
04:38:40 23 it's -- some of these things GP was urging were outside the
04:38:44 24 scope of the notices that had been promulgated, we're
04:38:48 25 promulgating a new notice, but we want to take hopefully one

04:38:52 1 30(b)(6) deposition at least relating to discovery and
04:38:56 2 documents and the sort of mundane stuff of who works for whom
04:39:00 3 and who went to what meeting kind of thing.

04:39:06 4 You know, so that's -- and it got dragged into the
04:39:08 5 more complex disputes, and some of these topics, I suppose in
04:39:14 6 fairness to Mr. Neuwirth, you know, are matters that are best
04:39:18 7 handled with an interrogatory, or maybe we should devise a
04:39:24 8 rifle shot document request. Some of these topics go to the
04:39:30 9 kind of organizational things that we all seem to be talking
04:39:34 10 about here to no end and I gather are being talked about in
04:39:38 11 the other three -- pardon me, other two meet and confers.

04:39:42 12 You know, we appreciate they have offered a live
04:39:44 13 witness on certain of the topics. We have offered -- I think
04:39:50 14 it would probably be most efficient for us to revise our
04:39:54 15 30(b)(6) notice. I guess we have to -- and perhaps coordinate
04:39:58 16 some with Mr. Neuwirth and his client to make sure that --
04:40:04 17 because we are trying to give him these are the topics we want
04:40:06 18 information on. You know, we really -- we are assuming we can
04:40:10 19 have some verification of the veracity of the responses. We
04:40:14 20 don't care whether these come from a request for admission or
04:40:20 21 30(b)(6) deposition. We just want to get the information so
04:40:24 22 we can put on our case and, you know, win or lose or draw.

04:40:28 23 MR. NEUWIRTH: So, Judge Nolan, I think you can tell
04:40:30 24 from looking at this that according to the list -- this is the
04:40:36 25 list that's here is the list, as it says in our letter, this

04:40:40 1 list from pages 2 through 4 -- actually, it goes on, 2
04:40:48 2 through 8, there are about a hundred topics here for this
04:40:52 3 30(b)(6) deposition.

04:40:58 4 And you know -- I'm sure you know -- let me withdraw
04:41:02 5 that comment. I am familiar with the fact that there is a lot
04:41:08 6 of case law and subparts and everything else in discovery, but
04:41:12 7 you can tell just from looking at this, we have about a
04:41:14 8 hundred topics here. And if you look at the number that have
04:41:16 9 been identified as ones that we either considered to be beyond
04:41:22 10 the scope of the notice or, as in the case of questions about
04:41:26 11 the document hold seeking privileged information, it's really
04:41:32 12 not that many relative to the size of the whole list.

04:41:34 13 So if the plan at this point -- and as you know, this
04:41:40 14 is from April 5th, 2012, and I don't believe there's been
04:41:44 15 communication back since then. But if Mr. Goodwin -- and I
04:41:50 16 said I don't think because I may not have been involved in
04:41:52 17 some communication, but if Mr. Goodwin's proposal is taking
04:41:56 18 account of all we've discussed today and everything here they
04:41:58 19 want to promulgate a revised notice, we can look at that. And
04:42:02 20 we are happy to have a deposition. I just think we need
04:42:06 21 reasonable parameters.

04:42:08 22 THE COURT: And hopefully it would be narrower.

04:42:08 23 MR. NEUWIRTH: I would hope so.

04:42:10 24 THE COURT: See, maybe what I am really saying is,
04:42:14 25 you know, it's like the chicken and the egg with all this

04:42:16 1 stuff. Is it better to do it first, or, actually, would it
04:42:22 2 make more sense when you've got some documents and you can
04:42:24 3 actually talk to somebody about some of the documents. So we
04:42:28 4 are all going to learn something from this. This might be a
04:42:30 5 better time for the next case to wait a little bit more.

04:42:36 6 So I am glad to hear you're open to it, you're
04:42:38 7 reserving any specific objections you've got, but you're
04:42:42 8 willing to get the person together, and you will try to do
04:42:48 9 something that can be done in one day.

04:42:50 10 MR. GOODWIN: And it's eight topics. This was my
04:42:54 11 attempt to actually try and literally give people -- these are
04:42:58 12 the questions I want to ask you at a 30(b)(6) deposition --

04:43:00 13 THE COURT: Good.

04:43:02 14 MR. GOODWIN: -- so that you won't be surprised when
04:43:04 15 I say, Well, do your personnel use Outlook? Do they keep
04:43:08 16 contacts in Outlook? Is there a group contact or is it by
04:43:10 17 individual?

04:43:10 18 THE COURT: Good.

04:43:12 19 MR. GOODWIN: The kind of things you would rattle
04:43:14 20 off, it's like a 30-second examination, so that -- the problem
04:43:18 21 with 30(b)(6) depositions, as I am sure your Honor is aware,
04:43:22 22 is you go in and one side inevitably thinks you're asking
04:43:26 23 questions out of bounds of the notice and the other side
04:43:28 24 thinks you're ignoring the notice and you want to take a day's
04:43:32 25 deposition and then you get motions practice. Let's avoid

04:43:36 1 that. I just want my answers.

04:43:38 2 THE COURT: Good. That's a nice practical approach.
04:43:40 3 That's good.

04:43:40 4 MR. GOODWIN: And I was thinking, you know, we were
04:43:44 5 trying to avoid a deep dive. I just want to pick up something
04:43:48 6 I said in the morning to avoid a deep dive into the document
04:43:52 7 requests here, and I am wondering whether it isn't worth --
04:43:58 8 because some of Mr. Neuwirth's representations here seem very
04:44:00 9 different from what was written in the --

04:44:06 10 THE COURT: In the answers a year ago.

04:44:08 11 MR. GOODWIN: -- in the answers.

04:44:08 12 THE COURT: In the answers a year ago, and they are
04:44:10 13 because of what we know a year later.

04:44:14 14 MR. GOODWIN: And I am just picking an example.

04:44:16 15 THE COURT: Sure.

04:44:16 16 MR. GOODWIN: I don't want to fight over the example,
04:44:18 17 but we had like a list of I think it's competitive conditions,
04:44:24 18 and we talked about market shares, consolidation, production,
04:44:26 19 capacity -- maybe I will just show the reporter this. But if
04:44:34 20 you look at request 45, and I'm just -- but we had a list of
04:44:38 21 12 things. And GP in its responses came back and said, We're
04:44:44 22 talking to you about pricing, production, and capacity, and
04:44:46 23 they used that phrase throughout their answers.

04:44:48 24 Now, maybe it is that they have produced all sorts of
04:44:52 25 stuff about market shares and consolidation and fixed or

04:44:58 1 variable costs or inventories or entry and exit conditions and
04:45:02 2 all these other economic factors that go into the market.
04:45:06 3 Maybe that's all in their production today, in which case, my
04:45:10 4 mind becomes easier if I get a revised answer. Or maybe they
04:45:16 5 haven't and maybe we have to have a serious conversation about
04:45:20 6 inventory.

04:45:20 7 MR. NEUWIRTH: With all respect, again, I think the
04:45:24 8 problem we are having here is the problem of speculation
04:45:28 9 versus reality.

04:45:30 10 MR. GOODWIN: Well --

04:45:30 11 MR. NEUWIRTH: Let me explain why I am saying that.
04:45:32 12 It is clearly a reality that we gave the answer that we did to
04:45:36 13 your document request. However, you are imposing an
04:45:42 14 interpretation on what we said that I think understates what
04:45:46 15 we said. The category -- we got 92 requests that I think you
04:45:52 16 will have to acknowledge were tremendously broad and put
04:45:56 17 almost no constraints on what we'd have to look at.

04:46:00 18 So in responding to your request, we did what we
04:46:06 19 believed federal courts throughout the country have said is
04:46:08 20 the right approach, which is you can't just -- if you're going
04:46:12 21 to object to a request, you should make a good-faith effort to
04:46:16 22 produce what you do think is responsive to that request within
04:46:22 23 the scope of that request.

04:46:24 24 So what we tried to do is tell you, Look, we think
04:46:26 25 what you have asked for here is grossly overbroad, but here is

04:46:30 1 what we are going to give you. And as I believe I
04:46:34 2 demonstrated earlier today, the documents that we knew we
04:46:36 3 would be producing within those categories we believe
04:46:40 4 legitimately capture anything you could reasonably want to get
04:46:44 5 about these topics within the request.

04:46:46 6 And so, again, it is correct that these words from
04:46:52 7 your perspective without looking at the documents may be too
04:46:58 8 narrow, but I think if you look at the documents, you will see
04:47:00 9 that we really did make a good-faith effort to define things
04:47:04 10 in a way based on what we know about the business to really
04:47:06 11 get you what you're supposed to get.

04:47:14 12 MR. GOODWIN: This is --

04:47:16 13 THE COURT: I feel like you have been locked in a
04:47:18 14 room, is my interpretation. I feel like you have been like
04:47:22 15 locked in a room with all of this, and this is the first time
04:47:26 16 you have had like a real chance to be able to talk about, you
04:47:32 17 know, being locked in a room focused on one thing.

04:47:36 18 You did miss the last day and a half. I am exerting
04:47:42 19 my authority as the queen here that we are not really going
04:47:46 20 into requests to produce right at the moment until I figure
04:47:54 21 out -- until I figure out some kind of a -- it's going to be
04:48:00 22 on your homework for the next status, what to do about the --
04:48:04 23 what are your specific suggestions for getting us out of this
04:48:10 24 quagmire. And Chris and I are trying to figure some ways out,
04:48:16 25 whether it is asking you to prioritize what you need at this

04:48:22 1 point, whether it is rephrasing, whether it is because I don't
04:48:28 2 know what to do about these things.

04:48:32 3 So you make some good points on maybe it's not
04:48:36 4 answered exactly, but I don't want you to go back to the
04:48:38 5 drawing board and start trying to draft it until we have some
04:48:44 6 kind of overall plan here.

04:48:46 7 MR. GOODWIN: My purpose in raising this really was
04:48:48 8 to try and start a dialog between the parties that seriously
04:48:52 9 addresses the RFPs and the answers. I'll avoid reference to
04:48:58 10 my favorite example of language. They are just terms of
04:49:02 11 phrase and a little differences in phrasing. You know, maybe
04:49:06 12 it's the fault of having spent too much time in liberal arts
04:49:10 13 college.

04:49:10 14 THE COURT: Maybe. Maybe.

04:49:10 15 MR. GOODWIN: But I take the words they have given us
04:49:14 16 seriously, and I want to know -- they said they are going to
04:49:18 17 produce X in response to request A, and did they produce X or
04:49:24 18 did they produce X prime or did they produce Y, and I want to
04:49:26 19 really have a conversation with them about that.

04:49:30 20 THE COURT: That's why I am saying I think you were
04:49:30 21 locked in a room and you want to talk to somebody about all
04:49:34 22 you know about this case. I think you know a ton about
04:49:38 23 Georgia-Pacific.

04:49:40 24 You should hire this guy. I think he knows all kinds
04:49:42 25 of stuff.

04:49:42 1 MR. GOODWIN: I have a conflict, I hear.

04:49:44 2 THE COURT: He knows all kinds of stuff here.

04:49:46 3 Okay. Do we have any other topics? Let's see here.

04:49:56 4 Do you have anything else that you want to specifically --

04:49:58 5 MR. WOZNIAK: You wanted to ask some questions I
04:49:58 6 think about --

04:49:58 7 THE COURT: Oh, about plaintiffs.

04:50:00 8 MR. WOZNIAK: I know we covered it a little bit
04:50:02 9 yesterday.

04:50:06 10 THE COURT: You wanted to discuss the plaintiffs'
04:50:08 11 discovery and how they're doing it, because they are using the
04:50:10 12 CBAA both on your -- I found this out yesterday. Their
04:50:16 13 analytics, they are using it on their own, and you're using --

04:50:20 14 MR. WOZNIAK: And on the defendants, and that was one
04:50:22 15 -- just a point of clarification of the status last week. I
04:50:24 16 think I was confused by one of your questions, and I answered
04:50:26 17 it in a way -- my interpretation was I thought you were asking
04:50:28 18 where we stood in terms of loading defendants' productions up
04:50:34 19 for content-based analytics.

04:50:36 20 THE COURT: Right.

04:50:36 21 MR. WOZNIAK: And that process is still -- well, it's
04:50:38 22 further along than it was last week, but that's what created
04:50:40 23 some of the confusion with Steve thinking that we hadn't been
04:50:44 24 as far along in reviewing GP's documents. We have for certain
04:50:48 25 of the defendants' productions already batched those up, and

04:50:50 1 we have been reviewing those with live human reviewers
04:50:56 2 simultaneously.

04:50:56 3 At any rate, that's just a point of clarification.

04:50:58 4 THE COURT: Is there anything specific you're waiting
04:51:00 5 for that you might need right now in order for you to --

04:51:08 6 MR. NEUWIRTH: Well, look, I want to be fair. It is
04:51:12 7 inherent, as you know, in this type of case that there isn't
04:51:18 8 necessarily going to be proportionality between what the
04:51:22 9 defendants have to do and what the plaintiffs have to do.

04:51:22 10 THE COURT: Right.

04:51:24 11 MR. NEUWIRTH: However, you know, there are certain
04:51:32 12 basic things that I think the defendants are entitled to, and
04:51:38 13 that is at least the same level of commitment to preservation
04:51:50 14 production and that is being insisted upon from the
04:51:52 15 defendants. And so the two-minute version of the answer to
04:52:00 16 your question is that in February of this year, the defendants
04:52:08 17 asked the plaintiffs as the plaintiffs had asked the
04:52:12 18 defendants to provide information about the steps that each
04:52:16 19 named plaintiff had taken to identify, collect, and produce
04:52:22 20 responsive ESI. And about a week later, the plaintiffs
04:52:30 21 responded and said the following: For ESI, relevant files
04:52:32 22 were imaged by information technology specialists and sent
04:52:36 23 initially to plaintiffs' ESI vendor for processing and
04:52:40 24 deduplication pursuant to the stipulated agreement regarding
04:52:46 25 electronically-stored information and other tangible items.

04:52:50 1 Having received that representation and also with our
04:52:54 2 understanding that the named plaintiff Chandler had made its
04:53:02 3 production of documents, Georgia-Pacific took a 30(b)(6)
04:53:10 4 deposition of plaintiff Chandler in mid April, and the witness
04:53:18 5 at that deposition testified that prior to that month, the
04:53:24 6 only email collection that had ever been undertaken was for
04:53:28 7 this witness to go through his own email and print out
04:53:32 8 whatever emails he thought had to do with the purchase of
04:53:36 9 containerboard. And he testified that the ESI of Chandler
04:53:44 10 hadn't even been collected until March of 2012, which was a
04:53:48 11 month after the letter where the plaintiffs had said they
04:53:52 12 already collected the ESI.

04:53:56 13 And so we sent a letter after the deposition asking
04:54:00 14 that Chandler produce its emails and other ESI. And a few
04:54:08 15 days later, this is now May 4th, the plaintiff sent a letter
04:54:14 16 that said that, in fact, notwithstanding what had been said in
04:54:18 17 their letter of February, ESI from only three of the eight
04:54:22 18 named plaintiffs had ever been collected and sent to the
04:54:26 19 plaintiffs' ESI vendor by the end of March 2012 and that
04:54:32 20 Chandler, the party that we had deposed, had not been one of
04:54:36 21 those three.

04:54:42 22 And the May 4th letter included a promise -- not a
04:54:48 23 promise, but a statement by the plaintiffs that, quote, they
04:54:50 24 expect to make an ESI production within the next several
04:54:54 25 weeks. So several, I guess, is not a specific number, but

04:55:00 1 it's now the end of May, and no ESI, no further ESI, to our
04:55:08 2 understanding, has been produced by the plaintiffs.

04:55:10 3 Now, I don't want to overstate or understate this. I
04:55:14 4 am really trying not to be shrill about this. Just to make
04:55:18 5 the observation that I just think there is a certain irony
04:55:26 6 associated with the fact that in the face of all the
04:55:28 7 defendants have done, we are being highly criticized for not
04:55:32 8 having done enough, and it's a much simpler task that the
04:55:38 9 plaintiffs have to produce their ESI. They don't seem to be
04:55:42 10 doing the sort of fundamental things that one would expect.
04:55:44 11 And this has implications for us because depending on what ESI
04:55:48 12 now gets produced, we would ask to be able to reopen the
04:55:52 13 30(b)(6) deposition to ask questions about any new documents
04:56:00 14 that seem to merit it. And, again, we are not saying we have
04:56:02 15 to do it. We preserved our right to do that.

04:56:06 16 So, again, I want to be clear. I don't want to
04:56:08 17 overstate this, but we thought it was important in this
04:56:10 18 context to bring to your Honor's attention.

04:56:14 19 MR. WOZNIAK: Sure.

04:56:14 20 THE COURT: I think this is a very fair point because
04:56:18 21 up until the last two years, most plaintiffs really didn't
04:56:22 22 have ESI, come along pension. I mean, this is -- whether it's
04:56:30 23 a small amount or not, the preservation is an issue, I mean,
04:56:38 24 as you know. You represent plaintiffs.

04:56:40 25 So I don't know whether they're sitting around dying

04:56:44 1 to review it, but I think there should be some dialog on
04:56:48 2 what's going on with it. And we will have a report -- that
04:56:52 3 will be -- this is on the homework list too. I mean, can you
04:56:56 4 tell us today, Mr. Wozniak, where you are?

04:57:00 5 MR. WOZNIAK: Sure. And, Steve, there is no dispute.
04:57:02 6 He raises some fair points and good questions. I am happy to
04:57:06 7 answer them to the best of my ability.

04:57:08 8 It is true that a representation was made in that
04:57:12 9 February letter that Mr. Neuwirth referred to that all ESI had
04:57:16 10 been imaged. That was, in fact, a -- I guess a misstatement,
04:57:20 11 for lack of a better term. It's absolutely true that all ESI
04:57:26 12 was preserved from the outset. I was not personally involved
04:57:28 13 in all of those efforts, but I can tell you that for the three
04:57:32 14 -- what we have referred to as the three big ESI plaintiffs,
04:57:36 15 Mighty Pac, Hadco, and Ferraro (phonetic), that ESI was all
04:57:42 16 collected I believe it's fair to say in a forensically sound
04:57:48 17 manner, it was ingested into a platform by our ESI vendor, and
04:57:52 18 some analytics were applied to that ESI as early as I think
04:57:56 19 late 2011 and into early 2012. That process was then put on
04:58:02 20 hold pending the outcome of the evidentiary hearings, at which
04:58:06 21 time --

04:58:06 22 THE COURT: Right.

04:58:08 23 MR. WOZNIAK: -- we talked a little bit about this
04:58:10 24 yesterday, we made a decision, are we going to proceed --

04:58:12 25 THE COURT: Reviewing or producing --

04:58:14 1 MR. WOZNIAK: Well, doing the analytics or maybe use
04:58:16 2 some kind of Boolean search term, which, in all honesty, with
04:58:22 3 all our criticisms of Boolean search terms, there are some
04:58:22 4 situations where they arguably work well when you are looking
04:58:26 5 for a discrete sort of set of documents and you know what
04:58:28 6 you're looking for. I think arguments can be made that
04:58:30 7 Boolean search terms are fine, and we have an idea of what we
04:58:34 8 are looking for.

04:58:34 9 So we weighed whether or not to sort of step back and
04:58:38 10 use a Boolean approach or some quasi-Boolean approach. We
04:58:44 11 decided to move forward with the analytics approach. I was
04:58:48 12 hoping, as I stated yesterday, that by now, we would have at
04:58:50 13 least commenced our ESI production. I can tell you that I am
04:58:54 14 continually in contact with our vendor. Some of their efforts
04:58:58 15 have been slowed somewhat by the fact that they have been
04:59:02 16 involved in some of these status hearings and meet and
04:59:08 17 confers, but I can tell you that we are starting to get
04:59:10 18 results which I hope to turn around into a production within
04:59:14 19 the next couple of weeks. I can say -- you know, I hesitate
04:59:18 20 to put a firm date on it, but I really am hopeful that as soon
04:59:22 21 as next week, we can start producing the electronic
04:59:26 22 information.

04:59:26 23 Now, as to the collection, for reasons that I am not
04:59:32 24 entirely certain of, for the other non-big ESI plaintiffs, a
04:59:38 25 forensic collection was not performed at the same time as the

04:59:42 1 other three. All of that data was preserved. In light of
04:59:48 2 some of the testimony that came out from our own and what we
04:59:50 3 learned from our own expert, Mr. Hannan, about the importance
04:59:58 4 of forensically-sound collection, we decided to go back and I
05:00:00 5 think go above and beyond what is necessary to collect data.
05:00:02 6 I think we have collected way too much, we are going to find
05:00:06 7 out, but we did that for Chandler, we did that for our other
05:00:10 8 three named plaintiffs in light of some of what Mr. Hanner
05:00:14 9 testified to at the first evidentiary hearing.

05:00:16 10 So all of that ESI has been ingested into -- or at
05:00:20 11 least I believe -- yes, I believe it's fair to say that all
05:00:24 12 the ESI that's been forensically collected has been ingested
05:00:28 13 into our review platform, it's been -- or into our vendor's
05:00:32 14 platform for analytics, and we are starting to see those
05:00:36 15 results, and we hope to be producing that ESI in very short
05:00:40 16 order. There are a few main plaintiffs who have such small
05:00:46 17 amounts of ESI that we are going to review that in a linear
05:00:50 18 fashion.

05:00:52 19 THE COURT: Do you have litigation holds on each of
05:00:54 20 yours --

05:00:56 21 MR. WOZNIAK: Absolutely.

05:00:56 22 THE COURT: -- and are you willing to give them the
05:00:58 23 names of the people --

05:00:58 24 MR. WOZNIAK: We already covered that earlier. I
05:01:02 25 don't think that's going to be a problem.

05:01:02 1 THE COURT: I missed that one. That's good.

05:01:06 2 MR. WOZNIAK: I hope that answers all of
05:01:08 3 Mr. Neuwirth's concerns. I am happy to discuss, you know, any
05:01:10 4 of these issues in further detail.

05:01:12 5 THE COURT: See, the rest of the folks are still knee
05:01:16 6 deep into producing. I mean, maybe Mr. Neuwirth is actually
05:01:20 7 looking for something to do now that he has produced all this
05:01:28 8 material, he needs to like start investigating these class
05:01:32 9 members here.

05:01:34 10 MR. NEUWIRTH: We did take the deposition because we
05:01:36 11 thought it was important.

05:01:38 12 THE COURT: You did.

05:01:38 13 MR. NEUWIRTH: As we have said from day one, we
05:01:40 14 really would like to get to the merits.

05:01:42 15 THE COURT: I know.

05:01:42 16 MR. NEUWIRTH: And our main concern was --

05:01:44 17 THE COURT: I am teasing.

05:01:46 18 MR. NEUWIRTH: I know you were, but our main concern
05:01:48 19 was just that having taken this deposition and learned, as we
05:01:54 20 have all agreed, about what happened, we just wanted to
05:01:56 21 preserve our right to be able to reopen that.

05:02:00 22 THE COURT: Well, here is the advantage of having our
05:02:04 23 courtroom -- I mean, everything is on the record here, so
05:02:06 24 everything is really preserved here.

05:02:08 25 Yes?

05:02:08 1 MR. WOZNIAK: Only one further point in response --

05:02:10 2 THE COURT: Good. So you are in charge. I think you
05:02:12 3 said that -- I mean, they kind of described their team
05:02:16 4 yesterday, and Mr. Wozniak is the plaintiffs' --

05:02:20 5 MR. NEUWIRTH: I understand.

05:02:20 6 MR. WOZNIAK: For better or worse, I am the point
05:02:22 7 person on plaintiff ESI.

05:02:26 8 Just a short response to Mr. Neuwirth's suggestion
05:02:28 9 about the deposition possibly having to be reopened for
05:02:32 10 Chandler. We made very clear, and the correspondence will
05:02:36 11 confirm this, that Chandler had not produced ESI at the time
05:02:40 12 of the deposition, and defendants chose to move forward with
05:02:44 13 the deposition notwithstanding. We believe that any ESI -- as
05:02:48 14 I made clear yesterday, or tried to make clear, any ESI that
05:02:52 15 is produced will be duplicative and cumulative of what's
05:02:54 16 already been produced, so I am confident that no issue will
05:02:58 17 arise in terms of the need for further testimony, but we will
05:03:00 18 cross that bridge when we get to it.

05:03:02 19 THE COURT: Good. Well, I think it's the bewitching
05:03:06 20 hour. So Chris and I are going to work next week. We are
05:03:10 21 scheduled to reconvene -- is it two weeks or three weeks?

05:03:16 22 MR. NEUWIRTH: I think it's the 19th.

05:03:18 23 MS. McLEMORE: The 19th.

05:03:18 24 THE COURT: It's the 19th. And we are going to send
05:03:22 25 out a little status report, suggestions for agenda. We have

05:03:28 1 some homework -- as a good mediator, I have to summarize.

05:03:36 2 So our main points here, but main points that came
05:03:44 3 out of today is Georgia-Pacific is going to give you the names
05:03:54 4 and titles or names of labels, whatever they call them, of
05:04:04 5 their litigation hold. And do you think you can get that to
05:04:08 6 them --

05:04:08 7 MR. MOGIN: Don't forget the dates, your Honor.

05:04:10 8 THE COURT: No, we decided no dates.

05:04:12 9 MR. FREED: Well, I thought it was going to be the
05:04:14 10 best they could give us. We understood it's not precise.

05:04:18 11 THE COURT: It's not precise. But if you have a
05:04:20 12 specific that you need further information on the date, that's
05:04:24 13 what we got the agreement on.

05:04:26 14 Okay. Mr. Hannan has been added as a custodian, and
05:04:34 15 we are going to put in an order which we are going to float
05:04:40 16 with you guys first, by adding somebody as a custodian, that's
05:04:46 17 really true for everybody, it does not automatically qualify
05:04:54 18 -- that's why we are going to work on the language.

05:04:56 19 MR. NEUWIRTH: Here we also had the special
05:04:58 20 circumstance of Mr. Hannan's status as a senior CEO.

05:05:02 21 THE COURT: Right. There is quite a bit of law in
05:05:06 22 the Seventh Circuit about that. Everybody wanted to depose
05:05:10 23 Mayor Daley on everything.

05:05:46 24 Okay. So Mr. Hannan is number two main point.

05:05:52 25 30(b)(6), GP is willing and able, when you guys

05:06:02 1 decide you want to do it, they have agreed that they will go.

05:06:06 2 MR. NEUWIRTH: And I believe, I may have
05:06:08 3 misunderstood, but I believe that the plaintiffs were going to
05:06:12 4 consider whether they wanted to issue a refined notice.

05:06:14 5 THE COURT: Yes. You did. That's right. Because
05:06:20 6 you know a lot more than you knew --

05:06:22 7 MR. GOODWIN: We certainly volunteered that, and we
05:06:24 8 don't want to reinvent the wheel.

05:06:26 9 THE COURT: Okay. I think when I say plaintiffs, I
05:06:36 10 mean Charles. It seemed to me from today that you had -- I
05:06:42 11 wanted to make sure you didn't need more information in
05:06:46 12 general about backup tapes, not maybe there's going to be more
05:06:52 13 information coming down the road, but while people were
05:06:54 14 sitting here directly, did you have any specific questions.
05:07:00 15 But we can go back to that again. At least we've covered
05:07:04 16 that.

05:07:06 17 MR. GOODWIN: I think maybe this actually folds into
05:07:08 18 the 30(b)(6), or perhaps we just have a dispute between the
05:07:12 19 parties on, you know, the existence of any preserved backup
05:07:16 20 tapes from yonder in time.

05:07:24 21 THE COURT: Just that you have the information on it,
05:07:26 22 not that anybody is searching it, but at least we know
05:07:28 23 factually.

05:07:30 24 Okay. Next one is word index. We understand they
05:07:32 25 have two columns, and the defendants are thinking about if

05:07:40 1 they would add the fourth column. You all know what I mean by
05:07:48 2 this, I hope. And we are going to discuss that if we were
05:07:50 3 going to do that in general or if we were going to do it as a
05:07:56 4 way to do verification in the search. You don't have to say
05:08:00 5 anything today.

05:08:04 6 Okay. Custodians, I would say where we are on
05:08:08 7 custodians, on adding custodians, and this is across the board
05:08:14 8 for everybody, is -- but particularly with you, other than
05:08:22 9 Mr. Hannan right now, it is your preference, you think is the
05:08:32 10 most feasible is review some documents first, look at the
05:08:34 11 litigation, the names of the people who have the litigation
05:08:38 12 hold, and if you have something specific you want to talk to
05:08:44 13 us about, we are willing to talk to you about it.

05:08:46 14 MR. NEUWIRTH: Correct.

05:08:46 15 THE COURT: Is that correct?

05:08:48 16 MR. NEUWIRTH: That is correct, your Honor.

05:08:48 17 THE COURT: On custodians. So it's a work in
05:08:54 18 progress.

05:08:56 19 The queen got to say we are putting the RFPs on hold
05:09:08 20 until I can figure out something to do or suggest, and it's
05:09:12 21 going to be on your homework assignment too for the next
05:09:16 22 status.

05:09:18 23 Is this where we said the status is starting at 2:00
05:09:22 24 o'clock too? Did you know that?

05:09:22 25 MR. MOGIN: 1:30.

05:09:24 1 MR. NEUWIRTH: 1:30.

05:09:24 2 THE COURT: 1:30.

05:09:26 3 MR. NEUWIRTH: Right.

05:09:26 4 THE COURT: Because Jim can be here at 1:30.

05:09:30 5 MR. NEUWIRTH: And he can't be there earlier. And I
05:09:34 6 believe -- I don't know if it was communicated to the court,
05:09:36 7 but I requested that we start at 1:30 instead of 2:00 because
05:09:40 8 that's a day when I really do need to leave by late afternoon.

05:09:44 9 THE COURT: And that would be fine. And it would
05:09:44 10 give Mr. Mogin conveniently time if there are any follow-up
05:09:50 11 meetings, Mr. Mogin, Mr. Freed, anybody else. And since it's
05:09:56 12 a Tuesday, you could -- are you coming in on Monday, do you
05:10:00 13 think?

05:10:00 14 MR. MOGIN: I will probably come in on Sunday.

05:10:02 15 THE COURT: On Sunday. So maybe if there are any
05:10:04 16 follow-up meetings that need to be done individually -- I am
05:10:10 17 not just saying this: I have never done this before. I mean,
05:10:14 18 it's not like -- I have done 1500 mediations, but not one that
05:10:22 19 was focused and had so many levels here. I want your ideas as
05:10:30 20 we're going along. I want your ideas for topics, I want your
05:10:34 21 ideas for timing, and so when we send these suggestions out,
05:10:38 22 we mean it. I am just doing the best I can to make it up.

05:10:48 23 MR. FREED: Well, your Honor, I think if it gives you
05:10:50 24 any degree of comfort, we have achieved more over the last
05:10:52 25 three days because we were all together with somebody

05:10:56 1 overseeing it, and I think it's been correct.

05:11:00 2 THE COURT: I think we are going to do another round.
05:11:02 3 I know we have this countdown to September 30th, so we will
05:11:06 4 see where we are, but there were certainly certain things, and
05:11:10 5 we will have this beautiful transcript --

05:11:12 6 MR. FREED: Right.

05:11:12 7 THE COURT: -- that Carolyn will give us.

05:11:14 8 MR. NEUWIRTH: May I make one comment about your
05:11:16 9 list?

05:11:16 10 THE COURT: Yes.

05:11:18 11 MR. NEUWIRTH: On the first item, which is the names
05:11:20 12 and the titles of the people who got the litigation hold and
05:11:26 13 the rough date information, you had spoken about that with
05:11:30 14 respect to what GP was going to do, but my understanding was
05:11:34 15 that we had agreed earlier that the plaintiffs would give us
05:11:38 16 the same information.

05:11:38 17 THE COURT: Thank you.

05:11:38 18 MR. FREED: Right.

05:11:40 19 THE COURT: We did.

05:11:44 20 Okay, everybody, peace. So glad you came. Hope you
05:11:50 21 come back again.

05:11:52 22 MS. McLEMORE: Thank you, your Honor. I expect I
05:11:54 23 will be back.

05:11:54 24 THE COURT: Well, I hope so. I think it's good for
05:11:56 25 you and it's really good for us to have a real client in front

05:12:02 1 of us. This gets very abstract, and I think it reminds us why
05:12:06 2 we do what we do.

05:12:08 3 MS. McLEMORE: I appreciate the opportunity, your
05:12:10 4 Honor.

05:12:12 5 MR. GOODWIN: Thank you, your Honor.

05:12:12 6 MR. NEUWIRTH: Thank you very much, your Honor.

7 (Which were all the proceedings had in the above-entitled
8 cause on the day and date aforesaid.)

9 I certify that the foregoing is a correct transcript from
10 the record of proceedings in the above-entitled matter.

11 _____
Carolyn R. Cox
12 Official Court Reporter
Northern District of Illinois

Date

13 /s/Carolyn R. Cox, CSR, RPR, CRR, FCRR

14

15

16

17

18

19

20

21

22

23

24

25